



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

LAW OFFICE OF ROBERT E. KASODY, PROFESSIONAL CORPORATION 6601 CENTER DRIVE WEST, SUITE #500 LOS ANGELES CA 90045

MAILED

OCT 1 2 2010

OFFICE OF PETITIONS

In re Application of

SCALISI, Joseph F.

Application No. 11/441,563

Filed: May 27, 2006

Attorney Docket No. LBTECH.002DV1

DECISION ON PETITION

TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 02, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by Robert E. Kasody on behalf of all attorneys of record who are associated with customer No. 70515. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Joseph F. Scalisi at the address indicated below.

There is an outstanding Office action mailed July 22, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Michelle R. Eason at 571-272-4231.

Michelle R. Eason Paralegal Specialist Office of Petitions

cc:

JOSEPH F. SCALISI 38 DISCOVERY, SUITE 150 IRVINE, CA 92618



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.usplo.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/441,624	05/26/2006	Devid Wei	32052-9206.US00	1075
25070	7590 01/24/2011		EXAM	INER
PERKINS COI PATENT-SEA	E LLF		ZHENG, J	ACKY X
P.O. BOX 1247 SEATTLE, WA			ART UNIT	PAPER NUMBER
SEATTLE, WA	1 70111-12-1	•	2625	
			NOTIFICATION DATE	DELIVERY MODE
•			01/24/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentprocurement@perkinscoie.com

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAIL

JAN 2 1 2010

PERKINS COIE LLP PATENT-SEA P.O. BOX 1247 SEATTLE WA 98111-1247 DIRECTUR'S OFFICE
TECHNOLOGY CENTER 2600

In re Application of

Wei, Devid

Serial No.: 11/441624

Filed: May 26th, 2006

PRINT SYTEMS AND METHODS

DECISION ON PETITION

ACCEPTANCE OF COLOR

OF COLOR DRAWINGS

This is a decision on the petition under 37 CFR §1.184(a)(2), filed May 26, 2006 requesting acceptance of color drawings.

The petition requests that the color drawings identified in FIGS. 1,2, 3A, 3B, 4 be accepted in lieu of black and white drawings.

A grantable petition under 37 C.F.R. §1.84(a)(2) must be accompanied by a fee set forth under 37 C.F.R. § 1.17(h), 3 (three) sets of the color drawings in question, and the specification must contain, or be amended to contain, the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings:

"The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee."

The petition is **GRANTED**.

Kenneth Wieder

Quality Assurance Specialist

Technology Center 2600

Communications



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LEE & HAYES, PLLC 601 W RIVERSIDE SUITE 1400 SPOKANE WA 99201

MAILED
MAR 1 4 2011
OFFICE OF PETITIONS

In re Application of

Jung et al.

Application No. 11/441,785

Filed: May 26, 2006

Attorney Docket No. 0605-003-021-CIP001

DECISION ON PETITION

TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed January 26, 2011, which is being treated as a request to withdraw from employment in a proceeding before the Office under 37 C.F.R. § 10.40.

The request is **DISMISSED**.

A review of the file record indicates that Lewis C. Lee does not have power of attorney in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

The request to change the correspondence address of record is not accepted in view of Lewis C. Lee not having power of attorney. See MPEP §§ 601.03 and 405.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Currently, there is no outstanding Office action that requires a reply.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski Petitions Examiner

Office of Petitions

cc:

Searete LLC Suite 110

1756-114th Ave. S.E. Bellevue WA 98004

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

FOLEY & LARDNER LLP 150 EAST GILMAN STREET P.O. BOX 1497 MADISON WI 53701-1497

MAILED FEB 28 2011

OFFICE OF PETITIONS

In re Patent No. 7,768,113 Issue Date: August 3, 2010 Application No. 11/441,908

Filed: May 26, 2006

Attorney Docket No. 088245-9264

: DECISION ON REQUEST
: FOR RECONSIDERATION OF
: PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT UNDER 37 C.F.R. §1.705(d)", filed September 27, 2010. Patentee requests that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from 325 to 421 days.

The petition is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of four hundred twenty-one (421) days.

On August 3, 2010 the application matured into U.S. Patent No. 7,768,113 with a revised PTA thereon of 325 days. On September 27, 2010, patentee filed the instant request and disputes the reduction of one hundred thirteen (113) days attributed to patentee for the submission of a paper filed April 13, 2010 after the Notice of Allowance was mailed.

This application is not subject to a terminal disclaimer.

The reduction of one hundred eighteen (113) days pursuant to 37 C.F.R. § 1.704(c)(10) is at issue.

The reduction of 113 days has been found to be incorrect. A review of the application file, as stated by Patentee, supports a conclusion that the reduction should be from the

filing of the Amendment under 37 CFR § 1.312 on April 13, 2010 to the mailing of the response on April 29, 2010, not the issue date of the Patent on August 3, 2010. The period of delay pursuant to 37 C.F.R. § 1.704(c)(10) is therefore 17 days.

In view thereof, the patent term adjustment indicated in the patent should have been four hundred twenty-one (421) days.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **four hundred twenty-one (421) days**.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Senior Petitions Attorney

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT

: 7,768,113 B2

DATED

: August 3, 2010

INVENTOR(S): Volkan Ozguz

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [*] Notice: under 35 USC 154(b) by (325) days

Delete the phrase "by 325 days" and insert – by 421 days--



COMMISSIONER FOR PATENTS United States Patent and Trademark Office P.O. Box 1450

ALEXANDRIA, VA 22313-1450 www.uspfo.gov

MAILED

SEP 082010

SONNENSCHEIN NATH & ROSENTHAL LLP P.O. BOX 061080 SOUTH WACKER DRIVE STATION, WILLIS TOWER CHICAGO IL 60606

OFFICE OF PETITIONS

In re Patent No. 7,632,985 Issued: December 15, 2009 Application No. 11/441,914

Filed: May 26, 2006

Dkt. No.: MONS:113US

: DECISION ON APPLICATION FOR

: PATENT TERM ADJUSTMENT and

: NOTICE OF INTENT TO ISSUE

: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 17, 2010 requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by 412 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by 412 days is **GRANTED**.

The Office acknowledges the previous submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 412 days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown Senior Petitions Attorney Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

CC: Marshall P. Byrd

2000 McKinney, Ste 1900

Dallas, TX 75201

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

: 7,632,985

DATED

: December 15, 2009

DRAFT

INVENTOR(S): Malven, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 476 days

Delete the phrase "by 476 days" and insert - by 412 days--



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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SNR DENTON US LLP P.O. BOX 061080 CHICAGO IL 60606-1080

MAILED JAN 1 1 2011 OFFICE OF PETITIONS

In re Patent No. 7,608,761

BALEY et al.

Issue Date: 10/27/2009

Application No. 11/441,918

Filed: 05/26/2006

Attorney Docket No. MONS:114US

: DECISION ON REQUEST FOR

: RECONSIDERATION OF

: PATENT TERM ADJUSTMENT

: AND

: NOTICE OF INTENT TO ISSUE : CERTIFICATE OF CORRECTION

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM

ADJUSTMENT UNDER 37 C.F.R. §1.705(d), filed May 14, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two hundred sixty-two (262) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by **two hundred sixty-two (262) days** is **GRANTED**.

The Office acknowledges the previous submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **two hundred sixty-two (262) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell Senior Petitions Attorney

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

Christma Partera Donnell

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

: 7,608,761 B2

DATED

: Oct. 27, 2009

DRAFT

INVENTOR(S): Baley et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice:

Subject to any disclaimer, the term of this patent is extended or adjusted

under 35 U.S.C. 154(b) by 200 days.

Delete the phrase "by 200 days" and insert – by 262 days--

TAND THE PROPERTY OF THE PROPE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

ORTIZ & LOPEZ, PLLC P.O. BOX 4484 ALBUQUERQUE NM 87196-4484

MAILED

SEP 28 2011

OFFICE OF PETITIONS

In re Application of

David H. Dubois et al

Application No. 11/441,972

Filed: May 25, 2006

Attorney Docket No. LAD-2006-005

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed September 1, 2011, to change the name of inventor "Carolyn Connor Davenport" to – Carolyn M. Connor --.

The petition is **DISMISSED**.

Applicant is encouraged to note MPEP 605.04(c):

"In cases where an inventor's name has been changed after the application has been filed and the inventor desires to change his or her name on the application, he or she must submit a petition under 37 CFR 1.182. Applicants are also strongly encouraged to submit an application data sheet (37 CFR 1.76) showing the new name. The petition should be directed to the attention of the Office of Petitions. The petition must include an appropriate petition fee and a statement signed by the inventor setting forth both names and the procedure whereby the change of name was effected, or a copy of the court order."

The above petition did not include a statement signed by the inventor setting forth both names and the procedure whereby the change of name was effected, or a copy of the court order. Also, the petition fee under 37 CFR 1.182 is \$400.00 (37 CFR 1.17(f)) and not the \$130.00 submitted with the above petition on September 1, 2011.

Further, as noted above, applicant is strongly encouraged to submit an application data sheet (37 CFR 1.76) showing the new name.

In view of the above, the petition under § 1.182 cannot be granted at this time to change the inventor's name.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:

Mail Stop PETITIONS

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 40l Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

By internet:

EFS-Web

www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center

at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/ Karen Creasy Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED

DEC 02 2011

OFFICE OF PETITIONS

ORTIZ & LOPEZ, PLLC P.O. BOX 4484 ALBUQUERQUE NM 87196-4484

In re Application of David H. Dubois et al Application No. 11/441,972

Filed: May 25, 2006

Attorney Docket No. LAD-2006-005

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR 1.182, filed October 25, 2011, to change the name of inventor "Carolyn Connor Davenport" to —Carolyn M. Connor --.

The petition is **GRANTED**.

Office records have been updated to reflect the inventor's change of name. A corrected Filing Receipt, which reflects the inventor's change of name, accompanies this decision on petition.

Applicant is again **strongly** encouraged to submit an Application Data Sheet (ADS) (37 CFR 1.76) showing the new name.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

This application is being referred to the Office of Data Management for further processing in accordance with this decision.

/KOC/ Karen Creasy Petitions Examiner Office of Petitions

ATTACHMENT: Corrected Filing Receipt



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED OCT 03 2011 OFFICE OF PETITIONS

CHADBOURNE & PARKE LLP 30 ROCKEFELLER PLAZA NEW YORK NY 10112

In re Application of

HYDER, et al

Application No. 11/441,997 : DECISION ON PETITION

Filed: May 25, 2006

Docket No. 17199-055US3 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 9, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, December 14, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 15, 2011. A Notice of Abandonment was mailed June 20, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$1620; and (3) the required statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1110 extension of time fee submitted with the petition on September 9, 2011, was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's Deposit Account No. 03-1240.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a

reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 2165 for appropriate action by the Examiner in the normal course of business.

/Diane Goodwyn/
Diane Goodwyn
Petitions Examiner
Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

April 20, 2011

USDA, ARS, OTT 5601 SUNNYSIDE AVE RM 4-1159 BELTSVILLE MD 20705-5131

In re Application of

James J. Giovannoni et al. : **DECISION ON PETITION**

Application No. 11442028

Filed: 5/26/2006 : *ACCEPTANCE OF COLOR*

Attorney Docket No. 103.05 : DRAWINGS

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) May 26, 2006.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

- 1. The fee set forth under 37 C.F.R. 1.17(h),
- 2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
- 3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is <u>GRANTED</u>.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/
Office of Data Management
Publications Branch



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS . P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/442,028	05/26/2006	James J. Giovannoni	103.05	2383
7	590 04/20/2011	•	EXAM	INER
USDA, ARS, OTT			BAUM, STUART F	
5601 SUNNYSII RM 4-1159	DE AVE		ART UNIT	PAPER NUMBER
BELTSVILLE, MD 20705-5131			1638	
•		•	MAIL DATE	DELIVERY MODE
			04/20/2011	PAPER

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

The request to print a color drawing reference as the first paragraph in the portion of the specification containing a brief description of the drawings as required by 37 CFR 1.84 and MPEP § 608.02 has been received by the United States Patent and Trademark Office and will be entered into the specification.

571-272-4200 or 1-888-786-0101 Application Assistance Unit Office of Data Management

	SPE RESPONS	SE FOR CERTIFICATE OF CORRECTION
	•	Paper No.:
DATE	: <u>8-26-10</u>	
TO SPE OF	: ART UNIT 2612	
SUBJECT	: Request for Certificate of C	Correction for Appl. No.: <u>11442033</u> Patent No.: <u>7646292</u>
Please resp	ond to this request for a	a certificate of correction within 7 days.
FOR IFW FI	LES:	
the IFW app		es/corrections as shown in the COCIN document(s) in watter should be introduced, nor should the scope or
	plete the response (see nent code COCX.	below) and forward the completed response to scanning
FOR PAPER	R FILES:	
		es/corrections as shown in the attached certificate of rm (see below) and forward it with the file to:
Rand	ficates of Correction E Jolph Square – 9D10-E Location 7580	
		Omega Lewis Certificates of Correction Branch
		703-756-1575
Thank You	For Your Assistance	
	t for issuing the above n on the appropriate box.	e-identified correction(s) is hereby:
\ \	Approved	All changes apply.
	Approved in Part	Specify below which changes do not apply.
	Denied	State the reasons for denial below.
Comments		•
	gle to ent	fer
_	DANIELWU RY PATENT EXAMINER	SPE 26/2 Art Unit
DL-306 (REV. 7/03)		U.S. DEPARTMENT OF COMMERCE Patent and Trademark O

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

	JFL	NESFONSET ON CENTILICATE OF CONNECTION		
		Paper No.:20110126		
DATE	: January 26, 201	1		
TO SPE (OF: ART UNIT 2854			
SUBJECT	Γ : Request for Cer	: Request for Certificate of Correction on Patent No.: 7,380,929		
A response	e is requested with resp	ect to the accompanying request for a certificate of correction.		
Certificat	•	return with file, within 7 days to: anch - ST (South Tower) 9A22 703) 305-8309		
read as sh		uested, correcting Office and/or Applicant's errors, should the patent correction? No new matter should be introduced, nor should the scope or		
Thank Yo	u For Your Assistar	Certificates of Correction Branch		
-	est for issuing the a	bove-identified correction(s) is hereby:		
\boxtimes	Approved	All changes apply.		
	Approved in Part	Specify below which changes do not apply.		
	Denied	State the reasons for denial below.		
	has submitted the CC ation Data Sheet sup	DC fee to correct the faulty information supplied by applicant on plied on 5/20/2006.		
		/Judy Nguyen/ Supervisory Patent Examiner, Art Unit 2854		



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/442,365	05/26/2006	Jason T. Krajewski	450-71682-02	2215
-	7590 06/06/2011		EXAM	NER
KLARQUIST SPARKMAN, LLP			NGUYEN, TU MINH	
121 SW SALMO SUITE 1600	ON STREET		ART UNIT	PAPER NUMBER
PORTLAND, OR 97204			3748	
			NOTIFICATION DATE	DELIVERY MODE
			06/06/2011	EL ECTRONIC

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

The request to print a color drawing reference as the first paragraph in the portion of the specification containing a brief description of the drawings as required by 37 CFR 1.84 and MPEP § 608.02 has been received by the United States Patent and Trademark Office and will be entered into the specification.

571-272-4200 or 1-888-786-0101 Application Assistance Unit Office of Data Management

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

June 6, 2011

KLARQUIST SPARKMAN, LLP 121 SW SALMON STREET SUITE 1600 PORTLAND OR 97204

In re Application of

Jason T. Krajewski et al. : DECISION ON PETITION

Application No. 11442365

Filed: 5/26/2006 : *ACCEPTANCE OF COLOR*

Attorney Docket No. 450-71682-02 : DRAWINGS

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) May 26, 2006.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

- 1. The fee set forth under 37 C.F.R. 1.17(h),
- 2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
- 3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is <u>GRANTED</u>.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/ Office of Data Management Publications Branch



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

CANTOR COLBURN, LLP 20 Church Street 22nd Floor Hartford, CT 06103

MAILED

AUG 2 5 2010

OFFICE OF PETITIONS

In re Patent No. 7,706,159

Issue Date: April 27,2010

Application No. 11/442,451

Filed: May 26, 2006

Patentee(s): Tae-Whan Kim, et. al.

ON PETITION

This is a decision on the petition under 37 CFR 3.81 filed June 3, 2010, to add the name of the second assignee on the front page of the above-identified patent by way of a Certificate of Correction.

Since the present request complies with the requirements of 37 CFR 3.81, the request is **GRANTED**.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (57) 272-3226. Inquiries regarding the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

Petitions Examiner
Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 7182679

Issue Date:

February 27,2007

Application No. 11442466

Filed:

May 25,2006

Attorney Docket No. AFAB02

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

March 15,2012

This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

March 15,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))				
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7182679	2007-02-27	11442466	2006-05-25	AFAB02
				entify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY X Patentee cla	ims, or has previously	claimed, small ent	tity status. See 37 0	FR 1.27.
	EMENT TO SMALL ENTER IT IN SMA		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)
7 ½ year	(1552)		7 ½ year	(2552)
11 ½ year			11 ½ yea	(2553)
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) must be paid a	s a condition of accepting unintentionally delayed payment
	MAINTENANCE FEE (37 CFR 1.20(e)-(g)) The appropriate maintenance fee must be submitted with this petition.			
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN I	PAYMENT OF THE	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED				
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	FORY OR SIGNATO	RIES
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."				
I certify, in accordance with 37 CFR 1.4(d)(4) that I am				
An attorney or agent registered to practice before the Patent and Trademark Office				
A sole pater	ntee			
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.				
A joint patentee; all of whom are signing this e-petition				
The assignee of record of the entire interest				

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	The Assig	nee of record of the entire interest		
Signature req	R 3.71 an assignee becomes of record by fil uirements are set forth in 37 CFR 1.4(d), an ne entire interest	•	` ,	n behalf of the
Signature	/joseph locke/		Date (YYYY-MM-DD)	2012-03-13
Name	JOSEPH LOCKE			
Enter Reel an	d Frame Number		Remove	
Reel Number	022399	Frame Number	0074	
Click ADD for additional Reel Number and Frame Number Add				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

	SPE RESPONSE FOR CERTIFICATE OF CORRECTION
DATE	:11/02/11
TO SPE OF	: ART UNIT
SUBJECT	: Request for Certificate of Correction for Appl. No.: 11442473 Patent No.: 7956031
	Coff: mailroom date: 10/24/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC) Randolph Square – 9D10-A Palm Location 7580

Note: Please check the (Other Publications), Specifications & Claims should these changes be made or not?

<u> Lamonte Newsome</u>

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

Approved	ONSE FOR CERTIFICATE OF CORRECTION All changes apply.
. Approved in Part	Specify below which changes do not apply
☐ Denied	State the reasons for denial below.
omments:	·

Doc Code: PET.AUTO Document Description: Petition autom	natically granted by EFS-Web	PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce	
Electronic Petition Request	PETITION TO WITHDRAW AN APPLIC THE ISSUE FEE UNDER 37 CFR 1.313(ATION FROM ISSUE AFTER PAYMENT OF	
Application Number	11442663		
Filing Date	30-May-2006		
First Named Inventor	Masanori Kato		
Art Unit	2626		
Examiner Name	JUSTIN RIDER		
Attorney Docket Number	016891-0940		
Title	METHOD AND APPARATUS FOR NOISE SU	JPPRESSION	
withdraw an application from issue, a showing of good and sufficient reaso	om issue for further action upon petition by applicant must file a petition under this sect ons why withdrawal of the application from ITHDRAW THIS APPLICATION FROM ISSUE U	ion including the fee set forth in § 1.17(h) and a issue is necessary.	
are unpatentable, an amendment to claims to be patentable; (b) Consideration of a request for con	aims, which must be accompanied by an un such claim or claims, and an explanation as attinued examination in compliance with § 1	equivocal statement that one or more claims to how the amendment causes such claim or .114 (for a utility or plant application only); or e in favor of a continuing application, but not a	
Petition Fee			
Applicant claims SMALL ENTITY status. See 37 CFR 1.27.			
Applicant is no longer claim	Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).		
Applicant(s) status remains a	Applicant(s) status remains as SMALL ENTITY.		
Applicant(s) status remains as other than SMALL ENTITY			
Reason for withdrawal from issue			

One or more claims are unpate	ntable				
Consideration of a request for consideration of a request	Consideration of a request for continued examination (RCE) (List of Required Documents and Fees)				
	Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).				
RCE request, submission, and fee.	RCE request, submission, and fee.				
	I certify, in accordance with 37 CFR 1.4(d)(4) that: The RCE request ,submission, and fee have already been filed in the above-identified application on				
Are attached.					
THIS PORTION MUST BE COMPLETE	D BY THE SIGNATORY OR SIGNATORIES				
I certify, in accordance with 37 CFR	1.4(d)(4) that I am:				
 An attorney or agent registered in this application. 	 An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application. 				
An attorney or agent registered	An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.				
A sole inventor					
A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors					
A joint inventor; all of whom are signing this e-petition					
The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71					
Signature	/Thomas G. Bilodeau/				
Name	Vame /Thomas G. Bilodeau/				
Registration Number 43438					



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Decision Date: December 9, 2011

In re Application of:

Masanori Kato

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No: 11442663

Filed: 30-May-2006 Attorney Docket No: 016891-0940

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed December 9, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 2626 for processing of the request for continuing examination under 37 CFR 1.114.

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE CA 92614

MAILED

OCT 072010

OFFICE OF PETITIONS

In re Patent No. 7,777,955

Issued: August 17, 2010

Application No. 11/442,673

Filed: May 26, 2006

Attorney Docket No. OPTRES.060A1

ON PETITION

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski

Petitions Examiner

Office of Petitions

CERTIFICATION AND REQUEST FOR RELIEF DUE TO EVENTS OF MARCH 11, 2011, IN JAPAN (Page 1 of 2)

Nonprovisional Application Number or Control Number (if applicable):	Patent Number (if applicable):
11/442,692	
First Named Inventor:	Title of Invention:
K. Takahashi	VIDEOPHONE APPARATUS AND VIDEOPHONE

APPLICANT/PATENTEE/REEXAMINATION PARTY HEREBY CERTIFIES AND REQUESTS THE FOLLOWING FOR THE ABOVE-IDENTIFIED APPLICATION/PATENT/REEXAMINATION PROCEEDING.

- 1. FOR PATENT APPLICATIONS AND REEXAMINATION PROCEEDINGS PENDING IN THE USPTO AS OF MARCH 11, 2011, IN WHICH A COMMUNICATION FROM THE USPTO IS SOUGHT TO BE REMAILED:
 - a. One or more inventors, an assignee, or a correspondence address (for the application/proceeding) is in an area of Japan affected by the earthquake and/or tsunami of March 11, 2011.
 - b. A reply or response to an Office action (final, non-final, or other), a notice of allowance, or other Office notice (hereinafter collectively referred to as "Office communication") is outstanding.
 - c. The statutory or non-statutory time period set for response has not yet expired.
 - d. Withdrawal and reissuance of the Office communication is requested.
 - e. It is acknowledged that if this request is not made within sufficient time so that withdrawal and reissuance of the Office communication occur prior to expiration of the statutory or non-statutory time period (as permitted to be extended under 37 CFR 1.136(a), or as extended under 37 CFR 1.550(c) or 1.956), this request may not be granted.
 - f. The need for the reissuance of the Office communication was due to the effects of the earthquake and/or tsunami of March 11, 2011.
 - g. This request is being sent via EFS-Web or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
- 2. FOR PATENTEES WHO WERE UNABLE TO TIMELY PAY A PATENT MAINTENANCE FEE DURING THE SIX-MONTH GRACE PERIOD FOLLOWING THE WINDOW TO PAY THE MAINTENANCE FEE:
 - a. The original window of time to pay the maintenance fee without the surcharge required by 37 CFR 1.20(h) expired on or after March 11, 2011.
 - b. The delay in paying the fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.
 - c. The USPTO is requested to *sua sponte* waive the surcharge in 37 CFR 1.20(h) for paying a maintenance fee during the six-month grace period following the window to pay the maintenance fee.
 - d. This request and payment of the maintenance fee during the six-month grace period following the window to pay the maintenance fee is being mailed to: Director of the United States Patent and Trademark Office, Attn: Maintenance Fee, 2051 Jamieson Avenue, Suite 300, Alexandria, VA 22314; or being transmitted via facsimile to: 571-273-6500.

CERTIFICATION AND REQUEST FOR RELIEF DUE TO EVENTS OF MARCH 11, 2011, IN JAPAN (Page 2 of 2)

- 3. FOR PATENTEES WHO NEED TO FILE A PETITION TO ACCEPT A DELAYED MAINTENANCE FEE PAYMENT UNDER 37 CFR 1.378(c):
 - a. The maintenance fee payment was required to have been paid after March 10, 2011.
 - b. A petition under 37 CFR 1.378(c) (using USPTO form PTO/SB/66 Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c))) is being promptly filed accompanied by the applicable maintenance fee payment (but not the surcharge under 37 CFR 1.20(i)).
 - c. The delay in payment of the maintenance fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.
 - d. The USPTO is requested to *sua sponte* waive the surcharge in 37 CFR 1.20(i) for accepting a delayed maintenance fee payment.
 - e. It is acknowledged that the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) must be filed by March 11, 2012, in order to be entitled to a waiver of the surcharge under 37 CFR 1.20(i).
 - f. It is acknowledged that the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) must be filed within twenty-four months from the expiration date of the patent. See 35 U.S.C 41(c).
 - g. This request and the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) is being submitted via EFS-Web or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
- 4. FOR NONPROVISIONAL PATENT APPLICATIONS FILED WITHOUT AN EXECUTED OATH OR DECLARATION OR PAYMENT OF THE BASIC FILING FEE, SEARCH FEE, AND/OR EXAMINATION FEE:
 - a. The nonprovisional patent application was filed on or after March 11, 2011, and prior to April 12, 2011.
 - b. The late filing of the oath or declaration or the basic filing fee, search fee, or examination fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.
 - c. The USPTO is requested to *sua sponte* waive the surcharge set forth in 37 CFR 1.16(f) for the late filing of the oath or declaration or basic filing fee, search fee, and/or examination fee.
 - d. This request, together with the executed oath or declaration or the basic filing fee, search fee, or examination fee, as well as the reply to the Notice to File Missing Parts, is being submitted via EFS-Web or by mail directed to Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signature /Eric D. Cohen/	Date March 28, 2011
Name (Print/Typed) Eric D. Cohen	Practitioner Registration Number 38,110

<u>Note</u>: Signatures of all the inventors, § 1.41(b) applicants, or assignees of record of the entire interest or their representative(s), or reexamination requesters at the appeal stage are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*.

r		-	
ı		п	
ı		п	
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ı		и	

*Total of ____ forms are submitted.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

ALPINE/BHGL P.O. BOX 10395 CHICAGO IL 60610

MAILED

APR 06 2011

OFFICE OF PETITIONS

In re Application of

Katsunori Takahashi

Application No. 11/442,692

Filed: May 26, 2006

Attorney Docket No. 9333/492 (IWUS05042)

DECISION ON PETITION

This is a decision on the request filed March 28, 2011, seeking relief under the provisions of an announcement by the Under Secretary and Director of the United States Patent and Trademark Office on March 17, 2011,

http://www.uspto.gov/patents/announce/japan_relief_2011mar17.pdf, providing relief to inventors and patent owners in areas affected by the earthquake and resulting tsunami of March 11, 2011.

The request for relief is **DISMISSED**.

As set forth in the announcement, the Office action or notice will be re-mailed and the period for response will be restarted if:

- (1) The patent application or reexamination proceeding is pending in the USPTO as of March 11, 2011, and a reply to an Office action (final, non-final, or other), a notice of allowance, or other Office notice is outstanding:
- (2) One or more inventors, an assignee or a correspondence address is in the area of Japan affected by the earthquake and resultant tsunami of March 11, 2011;
- (3) The period for response has not yet expired; and
- (4) Applicant requests relief. The request must be made by using the form PTO/SB/425 or be accompanied by a copy of the announcement.

The request must be made prior to expiration of the statutory or non-statutory time period set for response and within sufficient time so that withdrawal and reissuance of the Office

communication occur prior to expiration of the statutory or non-statutory time period (as permitted to be extended under 37 CFR 1.136(a), or as extended under 37 CFR 1.550(c) or 1.956). The use of the form PTO/SB/425 or the inclusion of a copy of the announcement will be treated as a representation that the need for the reissuance of the Office communication was due to the effects of the earthquake and resulting tsunami of March 11, 2011.

The instant petition is dismissed since it lacks item (1).

With respect to item (1), no additional reply from applicant is due. Further, there is no outstanding Office notice or action pending against this application. Petitioner has currently submitted an Amendment and Request for Continued Examination on March 29, 2011. Therefore, there is no relief that can be given to applicant. Accordingly, the petition is dismissed.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITIONS

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

By FAX:

(571) 273-8300

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-7751.

All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

/Joan Olszewski/ Joan Olszewski Petitions Examiner Office of Petitions

DATE	9/6/2011	
TO SPE OF	: ART UNIT 2/9/	
SUBJECT	: Request for Certificate of Correction	for Appl. No.: <u>///4/2808</u> Patent No.: <u>7984432</u> B
	•	CofC mailroom date: 8/26/2011
Please resp	oond to this request for a certific	
OR IFW F	·	and or composition within a cayo.
he IFW app	ew the requested changes/correplication image. No new matter the claims be changed.	ections as shown in the COCIN document(s) in should be introduced, nor should the scope or
	nplete the response (see below) ment code COCX.	and forward the completed response to scanning
FOR PAPE	R FILES:	
Please reviecorrection.	ew the requested changes/corre Please complete this form (see	ections as shown in the attached certificate of below) and forward it with the file to:
Rand	ificates of Correction Branch (dolph Square – 9D10-A n Location 7580	
Note:	····	<u> Virginia Tolbert</u>
		Certificates of Correction Branch
		(571) 272-0460
Thank You	ı For Your Assistance	
	st for issuing the above-idention on the appropriate box.	fied correction(s) is hereby:
Note your decision		fied correction(s) is hereby: All changes apply.
Note your decision	on on the appropriate box.	•
Note your decisio	Approved in Part	All changes apply.
Note your decisio	Approved Approved in Part Denied	All changes apply. Specify below which changes do not apply.
Note your decisio	Denied Ameniments to independents Allowed CLAIMS	All changes apply. Specify below which changes do not apply. State the reasons for denial below. MPPNT CLAIMS CHANGE THE SCOPE OF
Comments	Denied AMENDMENTS TO INDEPENDENTS ALLOWERS CLAIMS AND INC.	All changes apply. Specify below which changes do not apply. State the reasons for denial below. NPPNT CLAIMS CHANGE THE SCOPE OF LUPP, "WHATEN BEFORE SWITCHING BETWEEN
Comments THE CLA	Approved in Part Denied AMENDMENTS TO INDEPENDENTS ALLOWED CLAIMS ALLOWED	All changes apply. Specify below which changes do not apply. State the reasons for denial below. NPPNT CLAIMS CHANGE THE SCOPE OF LUPP, "WHENEIN BEFORE SWITCHING BETWEEN IN IS REISSUE TO BROADEN CLAIM
Note your decision	Denied Amenoments to independents Allowed Claims ALLOWED CL	All changes apply. Specify below which changes do not apply. State the reasons for denial below. NPPNT CLAIMS CHANGE THE SCOPE OF LUPP, "WHENEIN BEFORE SWITCHING BETWEEN IN IS REISSUE TO BROADEN CLAIM ANNOT BY ENTERUO DUE TO
Comments THE CLA TWO TH	Denied AMENDMENTS TO INDEPERATE ALLOWER, CLAIMS ALLOWE	All changes apply. Specify below which changes do not apply. State the reasons for denial below. NPPAT CLAIMS CHANGE THE SCOPE OF LUPP, "WHENEIN BEFORE SWITCHIAL BETWEEN IN IS REISSUE TO BROADEN CLAIM ANNOT BY ENTERED DUE TO

PTOL-306 (REV. 7/03)



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

January 25, 2012

Thomas G. Eschweiler Eschweiler & Associates, LLC National City Bank Building 629 Euclid Avenue, Suite 1000 Cleveland, OH 44114

Patent No: 7,984,432 B2 Application No: 11/442,808 Applicant: Mattias Edlund Issued: July 19, 2011

Title: METHOD FOR PATCHING A READ-ONLY MEMORY AND A DATA PROCESSING SYSTEM COMPRISING A MEANS OF PATCHING THE READ-ONLY MEMORY BASED ON PATCH

CONTEXTS

Request for Certificate of Correction:

Consideration has been given to your request for the issuance of a certificate of correction for the above- identified patent under the provisions of Rule 1.322/1.323.

The error complained of in columns 6 line 30 through column 8 lines 13 cannot be corrected per the examiner "Amendments to independent claims change the scope of the claims allowed. Claims include, "wherein before switching between two threads..." only avenue is reissue to broaden claim scope. Dependent claims cannot be entered due to dependency on proposed claims not patent claims".

In view of the foregoing your request in this matter is hereby denied.

Further correspondence concerning this matter should be directed to Decisions and Certificate of Correction Branch.

/Virginia Tolbert/
Virginia Tolbert
For Mary Diggs, Supervisor
Decisions and Certificate of Correction
(571) 272-0460



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO IL 60661

MAILED

AUG 27 2010

In re Patent of Catreux-Erceg et al.

Patent No. 7,634,235

Issue Date: December 15, 2009 Application No. 11/442,860

Filed: May 30, 2006

Attorney Docket No. 17370US01

OFFICE OF PETITIONS

DECISION ON REQUEST FOR RECONSIDERATION OF

PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(d), filed May 27, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by seven hundred seventy-five (775) days.

The May 27, 2010 petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by seven hundred seventy-five (775) days is **DISMISSED**.

On December 15, 2009, the above-identified application matured into U.S. Patent No. 7,634,235 with a revised patent term adjustment of 575 days. On April 22, 2010, patentees filed a Request for Recalculation of Patent Term Adjustment in View of Wyeth. On April 28, 2010, the Office mailed a Decision on Request for Recalculation of Patent Term Adjustment in View of Wyeth and Notice of Intent to Issue Certificate of Correction, which informed patentees that the Office had calculated a 774 day patent term adjustment and that a certificate of correction would be issued shortly absent the filing of a reconsideration petition within 1 month/30 days.

Patentees timely filed the present request for reconsideration of patent term adjustment on May 27, 2010, within 1 month/30 days of the mailing of the April 28, 2010 decision.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Patentees argue that the Office incorrectly calculated the reduction under 37 CFR 1.704(c)(10) in connection with an Amendment under 37 CFR 1.312, filed on October 19, 2009. Patentees argue the reduction should be 8 days, not 9 as the Office calculated.

The reduction has been considered and a 9 day reduction is found to be warranted. It is undisputed that applicants filed an Amendment under 37 CFR 1.312 on October 19, 2009, after the mailing of the Notice of Allowance on July 23, 2009. This was properly a basis for reduction of patent term adjustment pursuant to \$ 1.704(c)(10).

37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under $\S 1.312$ or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in $\S 1.703$ shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

The period of reduction was properly calculated as nine (9) days, counting the number of days in the period beginning on the date the Amendment under 37 CFR 1.312 was filed, October 19, 2009, and ending on October 27, 2009, the date the Office mailed a Response to the Rule 312 Communication. In other words, the reduction begins on the date the amendment was filed and runs through <u>and includes</u> the date the Office mailed a communication addressing the amendment. Accordingly, no change is warranted.

In view thereof, the correct patent term adjustment is **seven hundred seventy-four (774) days** (597 days A Delay minus 199 days B Delay minus 22 days Applicant Delay). As such, no changes in the patent term adjustment will be made.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

Shuere Willia Bloofly
Shirene Willis Brantley
Senior Petitions Attorney

Office of Petitions



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/442,928	05/30/2006	Martin Lund	17082US01 3525	
23446 7590 08/04/2011 MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET		EXAMINER		
			HALIYUR, VENKATESH N	
SUITE 3400 CHICAGO, II	60661		ART UNIT	PAPER NUMBER
emeado, n	2 00001		2476	
	1		<u> </u>	
			NOTIFICATION DATE	DELIVERY MODE
			08/04/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mhmpto@mcandrews-ip.com



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Chad M. Gilles MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO IL 60661 MAILED

AUG 0 3 2011
DIRECTOR OFFICE

TECHNOLOGY CENTER 2400

In re Application of: LUND, Martin

Application No. 11/442,928

Filed: May 31, 2006

Attorney Docket No.: 17082US01

Title of Invention: METHOD AND SYSTEM FOR POWER CONTROL BASED ON APPLICATION AWARENESS IN A PACKET NETWORK SWITCH DECISION ON PETITION UNDER 37 C.F.R. § 1.181

This is a decision on the petition filed July 13, 2011 under 37 CFR § 1.181 to invoke Supervisory Authority of the Commissioner and require the Examiner to withdraw the Finality of the office action mailed June 20, 2011.

The petition is **DISMISSED AS MOOT**.

On July 13, 2011, applicant's counsel filed a petition to the Director under 37 CFR § 1.181 to seek relief from actions of the examiner in relation to the Final Office action mailed June 20, 2011. In the petition, applicant's counsel alleged that the "[t]he office action of June 20, 2011 merely corrects the deficiencies of the non-final office action of February 2, 2011. Because the office action of June 20, 2011 merely corrects the deficiencies of a non-final office action, it too should be non-final."

RULES AND PROCEDURES

MPEP § 706.07(a): Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

MPEP § 706.07(d): If, on request by applicant for reconsideration, the primary examiner finds the final rejection to have been premature, he or she should withdraw the finality of the rejection. The finality of the Office action must be withdrawn while the application is still pending.

Serial No.: 11/442,928 Decision on Petition

The examiner cannot withdraw the final rejection once the application is abandoned. Once the finality of the Office action has been withdrawn, the next Office action may be made final if the conditions set forth in MPEP § 706.07(a) are met.

MPEP § 706.07(e): Once a final rejection that is not premature has been entered in an application/reexamination proceeding, it should not be withdrawn at the applicant's or patent owner's request except on a showing under 37 CFR 1.116(b). Further amendment or argument will be considered in certain instances. An amendment that will place the application either in condition for allowance or in better form for appeal may be admitted. Also, amendments complying with objections or requirements as to form are to be permitted after final action in accordance with 37 CFR 1.116(a).

MPEP § 707.07(f): In order to provide a complete application file history and to enhance the clarity of the prosecution history record, an examiner must provide clear explanations of all actions taken by the examiner during prosecution of an application. Where the requirements are traversed, or suspension thereof requested, the examiner should make proper reference thereto in his or her action on the amendment. Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and <u>answer the substance of it</u>. If applicant's arguments are persuasive and upon reconsideration of the rejection, the examiner determines that the previous rejection should be withdrawn, the examiner must provide in the next Office communication the reasons why the previous rejection is withdrawn by referring specifically to the page(s) and line(s) of applicant's remarks which form the basis for withdrawing the rejection.

OPINION

A review of MPEP §706.07 clearly shows (*inter alia*) that a second action on the merits shall be made final, except for where the examiner introduces a new ground of rejection not necessitated by amendment of the application by applicant. Theses sections of the MPEP do not mention, let alone suggest that the second office action after a non-final action not be made final, if the final office action corrects deficiencies of an immediately previous non-final office action, as alleged by petitioner. The rules in Title 37 of the Code of Federal Regulations with respect to the properness of final office action, however, <u>no</u> rule(s) has been found to support petitioner's conclusion (i.e. underlined supra)

Accordingly, the petition is **DISMISSED AS MOOT.**

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-3902. If attempts to reach the undersigned by telephone are unsuccessful, alternatively, Kim Huynh, Quality Assurance Specialist, can be reached at (571) 272-4147.

/Beatriz Prieto/ Quality Assurance Specialist Technology Center 2400



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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
www.uspto.gov

MAILED
AUG 0 8 2011
OFFICE OF PETITIONS

FORD GLOBAL TECHNOLOGIES, LLC FAIRLANE PLAZA SOUTH, SUITE 800 330 TOWN CENTER DRIVE DEARBORN MI 48126

In re Application of

ELLWOOD, et al

Application No. 11/443,311

Filed: May 31, 2006

Attorney Docket No. 81135525

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 20, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before July 19, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed April 19, 2011, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on July 20, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of \$1510; (2) the petition fee of \$1620; and (3) a statement of unintentional delay.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

The application is being referred to the Office of Data Management for processing into a patent.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: JILL DEMELLO HILL

1951 KIDWELL DRIVE, SUITE 550 B,

TYSONS CORNER, VA 22182



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/443,546	•	05/30/2006	Robert Paul Morris	1379/US	6613
52354	7590	08/12/2011		EXAMINER	
SCENERA RESEARCH, LLC		VU, THANH T			
JENKINS, V 5400 Trinity		TAYLOR & HUNT	, P.A.	ART UNIT	PAPER NUMBER
Suite 303				2175	
Raleigh, NO	27607			DATE MAILED: 08/12/201	1

Please find below and/or attached an Office communication concerning this application or proceeding.

The request for deferral/suspension of action under 37 CFR 1.103 has been approved.

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

SCENERA RESEARCH, LLC JENKINS, WILSON, TAYLOR & HUNT, P.A. 111 Corning Road Suite 220 Cary, NC 27518

In re Application of: MORRIS, Robert Application No. 11/443,546

Filed: May 30, 2006

For: METHODS, SYSTEMS, AND

COMPUTER PROGRAM PRODUCTS

FOR PROVIDING A USER

JARS OF RE INTERATION MODEL FOR USE BY A

DEVICE

DECISION ON PETITION UNDER 37 C.F.R. § 1.103(a)

This is a decision on the petition for suspension of prosecution under 37 CFR § 1.103(a) filed on August 2, 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on August 2, 2011, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of three (3) months from the mailing date of this letter. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to Eddie C. Lee whose telephone number is (571) 272-1732.

1 Eddie C. Leel

Eddie C. Lee

Quality Assurance Specialist, TC 2100

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United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
11/443,546	05/30/2006	Robert Paul Morris	1379/US 6613			
52354 SCENER Δ RI	7590 11/21/201	1	EXAM	INER		
	SCENERA RESEARCH, LLC JENKINS, WILSON, TAYLOR & HUNT, P.A.			VU, THANH T		
5400 Trinity R Suite 303	Road		ART UNIT	PAPER NUMBER		
Raleigh, NC 2	7607		2175			
			MAIL DATE	DELIVERY MODE		
			11/21/2011	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Kevin L. Wingate SCENERA RESEARCH, LLC 5400 Trinity Road Suite 303 Raleigh, North Carolina 27607

In re Application of: Robert P. MORRIS

Appl. No.: 11/443,546
Filed: May 30, 2006
For: METHODS, SYSTEMS, AND COMPUTER PROGRAM
PRODUCTS FOR PROVIDING A USER INTERACTION
MODEL FOR USE BY A DEVICE

DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecutions under 37 CFR § 1.103(a) filed on 14 November 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 14 November 2011, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of three (3) months from the mailing date of this letter. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/ Vincent N. Trans, QAS Technology Center 2100 Computer Architecture and Software

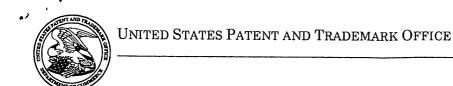


UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
11/443,546	05/30/2006	Robert Paul Morris	I379/US 6613		
52354 7590 02/23/2012 SCENERA RESEARCH, LLC JENKINS, WILSON, TAYLOR & HUNT, P.A.			EXAMINER		
			VU, THANH T		
5400 Trinity R Suite 303	oad		ART UNIT	PAPER NUMBER	
Raleigh, NC 2	7607		2175		
			MAIL DATE	DELIVERY MODE	
			02/23/2012	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Kevin L. Wingate SCENERA RESEARCH, LLC 5400 Trinity Road Suite 303 Raleigh, North Carolina 27607

In re Application of: Robert P. MORRIS

Appl. No.: 11/443,546
Filed: May 30, 2006
For: METHODS, SYSTEMS, AND COMPUTER PROGRAM
PRODUCTS FOR PROVIDING A USER INTERACTION
MODEL FOR USE BY A DEVICE

DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecutions under 37 CFR § 1.103(a) filed on 22 February 2012.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 22 February 2012, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of three (3) months from the mailing date of this letter. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/ Vincent N. Trans, QAS Technology Center 2100 Computer Architecture and Software



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.usplo.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
11/443,656	05/30/2006	Paul T. Gardiner	7.00006(US) 3922			
64868 7590 11/08/2011 IOVATE HEALTH SCIENCE RESEARCH INC.			EXAMINER			
	381 North Service Road West			TELLER, ROY R		
Oakville, ON I CANADA	L6M 0H4		ART UNIT	PAPER NUMBER		
CHIADA			1654			
			MAIL DATE	DELIVERY MODE		
			11/08/2011	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



NUV - 8 2011

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

IOVATE HEALTH SCIENCE RESEARCH INC. 381 North Service Road West Oakville ON L6M 0H4 CA CANADA

In re Application of:

Gardiner et al.

Serial No.: 11/443,656

Filed: May 30, 2006

Attorney Docket No.: 7.00006(US)

:

: PETITION DECISION

This is in response to the Petition filed by applicants under 37 CFR § 1.181 on August 19, 2010, requesting to suspend the rules under 35 USC 1.312.

The delay in deciding this petition is regretted but it has only just been brought to the attention of the Deciding Official.

BACKGROUND

A patent was issued in this application of August 31, 2010.

DECISION

The petition is **DISMISSED AS MOOT** in view of the fact that a Patent to Serial number 11/443,656 issued on August 31, 2010.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

/MC Seidel/ Marianne C. Seidel, Quality Assurance Specialist Technology Center 1600



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610 MAILED

OCT 12 2010

OFFICE OF PETITIONS

In re Patent of Kang et al.

Patent No. 7,586,323

Issue Date: September 8, 2009

Application No. 11/443,663

Filing Date: May 30, 2006

Attorney Docket No. 10125-4235

DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This decision is in response to the "Second Request for Reconsideration of Patent Term Adjustment" filed May 20, 2010, stating the correct patent term adjustment is three hundred thirty-five (335) days.

The request for reconsideration of the patent term adjustment is **GRANTED**.

The patent issued September 8, 2009. The patent term adjustment indicated in the patent was 234 days.

A request for reconsideration of the patent term adjustment under 37 C.F.R. § 1.705(d) was filed October 2, 2009.

A "Request for Recalculation of Patent Term Adjustment in View of *Wyeth*" was filed February 8, 2010.

On March 23, 2010, the Office issued a decision in response to the October 2, 2009 request. The decision stated a certificate of correction would be issued indicating the term of the patent is extended or adjusted by three hundred thirty-five (335) days.

On April 21, 2010, the Office issued a decision in response to the February 1, 2010 request. The decision indicated the Office would be issuing a certificate of correction indicating the term of the patent is extended or adjusted by four hundred thirty-six (436) days.

On April 27, 2010, the Office issued a certificate of correction indicating the term of the patent is extended or adjusted by three hundred thirty-five (335) days.

The instant request was filed May 20, 2010, and asserts the correct number of days of patent term adjustment is 335 days.

Patent No. 7,586,323 Page 2

The Office agrees the patent term adjustment is 335 days.

As previously noted, the Office issued a certificate of correction indicating the term of the patent is extended or adjusted by 335 days on April 27, 2010.

The Certificates of Correction Branch will be informed of the instant decision to ensure a certificate of correction indicating a patent term adjustment of 436 days is <u>not</u> be issued pursuant to the decision mailed April 21, 2010, because the patent term adjustment is 335 days as stated in the certificate of correction issued April 27, 2010.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley Senior Petitions Attorney

Office of Petitions

JUN 1 7 2011

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Application of

CHERUKURI, et al.

Serial No. 11/443665

Filed: May 30, 2006

For: MODIFIED RELEASE FORMULATIONS OF

ANTI-IRRITABILITY DRUGS

NOTICE OF WITHDRAWAL FROM ISSUE

UNDER 37 CFR 1.313(b)

The purpose of this communication is to inform you that the above-identified application is being withdrawn from issue pursuant to 37 CFR 1.313(b).

The application is being withdrawn to permit reopening of prosecution. The reasons therefore will be communicated to you by the examiner.

The issue fee is refundable upon written request. If, however, the application is again found allowable, the issue fee can be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due upon written request. This request and any balance due must be received on or before the due date noted in the new Notice of Allowance in order to prevent abandonment of the application.

Telephone inquiries should be directed to the Supervisory Patent Examiner, Bob Wax, at (571) 272-0623.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

Irem Yucel, Director

Technology Center 1600

HUNTON & WILLIAMS LLP INTELLECTUAL PROPERTY DEPARTMENT 1900 K STREET, NW SUITE 1200 WASHINGTON, DC 20006-1109





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Date

: June 16, 2011

To

: Director, Office of Publication and Dissemination

From

: Director, Technology Center 1600

Subject

: Withdrawal from Issue of

Applicant

S. Rao CHERUKURI, et al.

Application Number:

11/443665

Filed

May 30, 2006

The above-identified application has been assigned Patent No. 7,968,121 and an issue date of June 28, 2011.

It is hereby directed that this application be withdrawn from issue at the request of the Director, Technology Center 1600.

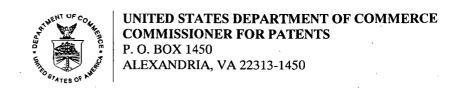
The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of June 28, 2011:

"All reference to Patent No. 7,968,121 S. RAO CHERUKURI, et al., of Vienna, Virginia, for 'MODIFIED RELEASE FORMULATIONS OF ANTI-IRRITABILITY' appearing in the Official Gazette of June 28, 2011, should be deleted since no patent was granted."

This application will be forwarded to Technology Center 1600.

Irem Yucel, Director

Technology Center 1600



Date

: 12/27/2010

Patent No.

: 7,509,361 B1

Serial No.

: 11/443,771

Inventor(s)

: Purcell et al.

Issue Date

: March 24, 2009

Title

: METHOD AND APPARATUS FOR GENERATING RANDOM

. NUMBERS FOR USE IN A FIELD PROGRAMMABLE GATE ARRAY

Doc./File No.

: 07-471-B

Re: Consideration for Certificate of Correction

Consideration has been given your request for a certificate of correction, for the above-identified patent under the provisions of Rule 1.322.

Respecting the alleged error(s) in your request, Inventors' addresses are printed in accordance with the Declaration or Oath, and in accordance with the present style for printing, the citizenship is not capture for printing. Therefore, no correction is in order here under the provisions of Rule 1.322 or 1.323.

In view of the foregoing, your request for certificate of correction is hereby denied.

Future correspondence concerning this matter should be filed and directed to Decisions & Certificates of Correction Branch.

Ernest C. White, *LIE* (571) 572-3385 Mary F. Diggs, *Supervisor* (703) 756-1580 Decisions & Certificates of Correction Branch ernest.white@uspto.gov

MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP 300 S. WACKER DRIVE 32ND FLOOR CHICAGO IL 60606

ecw

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED

MERCK P O BOX 2000 RAHWAY NJ 07065-0907

DEC 22 2011

OFFICE OF PETITIONS

In re Application of

Zhang et al.

Application No. 11/443793 Filing or 371(c) Date: 05/31/2006

Atty Docket No.:

IN06347US01

: ON REQUEST FOR

: RECONSIDERATION

: PATENT TERM ADJUSTMENT

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM UNDER 37 CFR 1.705(b), filed November 30, 2011. Applicant asserts that the correct Patent Term Adjustment should be 290 days, not 105 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent. The application for patent term adjustment is properly treated under 37 C.F.R. § 1.705(b).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two

months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee¹.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and *must* include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions

For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

MONAHAN & MOSES, LLC 13-B W. WASHINGTON ST. GREENVILLE SC 29601

MAILED JAN 1.1 2012

In re Patent No. 7,206,186 Issued: April 17, 2007

OFFICE OF PETITIONS

Application No.: 11/443,910 Filed: May 31, 2006

NOTICE

Attorney Docket No: CDE-001

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

CLARK & ELBING LLP 101 FEDERAL STREET BOSTON MA 02110

MAILED

JUN, 10 2011

OFFICE OF PETITIONS

In re Patent No. 7,740,849

Application No. 11/443,920

Filed: May 31, 2006

Issued: June 22, 2010

Attorney Docket No. 01948/106003

ON PETITION

This is a decision on the petition filed April 15, 2011, which is being treated as a request under 37 CFR 3.81(b)¹ to correct the name of the city of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Further, the \$130.00 requisite processing fee will be charged to petitioner's deposit account as authorized April 15, 2011.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-7751. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (703) 756-1814.

/Joan Olszewski/ Joan Olszewski Petitions Examiner Office of Petitions

¹ See MPEP 1309, subsection II; and Official Gazette of June 22, 2004.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

SPRINKLE IP LAW GROUP 1301 W. 25TH STREET SUITE 408 AUSTIN, TX 78705 MAILED

NOV 1 6 2010

OFFICE OF PETITIONS

In re Application of Rajkumar et al.

Application No. 11/444,020 : On Application For

Filing Date: May 31, 2006 : Patent Term Adjustment

Attorney Docket No. VIGN1870-1 :

This is in response to the "Request for Reconsideration of Patent Term Adjustment Under 37 C.F.R. § 1.705(b)" filed June 8, 2010. Applicants submit the correct patent term adjustment to be indicated on the patent is eight hundred fifteen (815) days, not five hundred sixty-eight (568) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, an applicant

may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee. ¹

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley Senior Petitions Attorney Office of Petitions

¹ For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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PERKINS COIE LLP P.O. BOX 1208 SEATTLE WA 98111-1208

MAILED

SEP 3 0 2010

In re Application of

George V. MANDELLA, et *al.* Application No. 11/444,061 Filed: May 30, 2006

Attorney Docket No. **58498-8001.US01**

OFFICE OF PETITIONS

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 27, 2010.

The request is **NOT APPROVED**.

The request to withdraw as attorney/agent of record and change of correspondence address is hereby not accepted. Petitioner has not complied with current USPTO requirements, set forth in 37 CFR 10.40 concerning Request for Withdrawal as Attorney and Change of Correspondence Address.

Petitioner has not properly submitted a correspondence address change directing all future correspondence for the application.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *who properly became of record under 37 CFR 3.71*, or if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71 (c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73 (b) that is signed by a party who is authorized to act on behalf of the assignee.

The Office will also no longer change the correspondence address to that of a new practitioner unless the Request is accompanied by a power of attorney to a new practitioner (e.g., Form PTO/SB/82). All future communications from the Office will be directed to the above-listed address until otherwise properly notified by the applicant or a proper change of correspondence address has been submitted.

Inquires concerning either the examination or status of the application should be directed to the Technology Center at 571-272-3700.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-7253.

/Monica A. Graves/ Petitions Examiner, Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

THE MARBURY LAW GROUP, PLLC 11800 SUNRISE VALLEY DRIVE, SUITE 1000 RESTON, VA 20191

MAILED

AUG 0 6 2010

OFFICE OF PETITIONS

In re Application of **Brian A. ROSENFELD**, et *al.* Application No. 11/444,082 Filed: May 31, 2006

Attorney Docket No. 2483-016

DECISION GRANTING PETITION UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed August 6, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 23, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.\(^1\)

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 3626 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/ Petitions Examiner, Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new .

Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No.

THE LAW OFFICE OF JOHN A. GRIECCI 703 PIER AVE., SUITE B #657 HERMOSA BEACH CA 90254

MAILED

AUG 22 2011

OFFICE OF PETITIONS

In re Application Of :

Larry Hayashigawa :

DECISION ON PETITION

Filed: May 30, 2006
Application No. 11/444,120

Atty Docket No. AVI1024-01US

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a) filed April 1, 2011.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)" or "Renewed Petition under 37 CFR 1.137(b)," as appropriate. Extensions of time under § 1.136(a) are permitted.

BACKGROUND

The above-identified application became abandoned for failure to file a timely and proper reply to the final Office action mailed August 4, 2010. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No reply received and no extensions of time obtained, the application became abandoned effective November 5, 2010. A courtesy Notice of Abandonment was mailed on March 15, 2011.

Petitioner argues that the delay was unavoidable in filing a reply to the August 4, 2010 Office action as: The examiner agreed that the Office action was critically deficient, agreed to mail a new action resetting the period for reply, and in

reliance on that agreement the applicant waited for a new action. No subsequent Office action was mailed, and the application went abandoned.

RELEVANT STATUTES RULE AND REGULATIONS

35 U.S.C. 133 provides that:

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

37 CFR 1.137(a) provides that:

If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application. A grantable petition pursuant to this paragraph must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in $\S 1.17(1)$;
- A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the

ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 U.S.P.Q. 666, 167-68 (D.D.C. 1963), aff'd, 143 U.S.P.Q. 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith, 671 F.2d at 538, 213 U.S.P.Q. at 982. Nonetheless, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines, 673 F. Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32.

37 CFR 1.116 and 1.135(b) are manifest that proceedings concerning an amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal, a delay is not "unavoidable" when the applicant simply permits the maximum extendable statutory period for reply to a final Office action to expire while awaiting a notice of allowance or other action. Finally, a delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice or the MPEP is not rendered "unavoidable" due to: (A) the applicant's reliance upon oral advice from USPTO employees; or (B) the USPTO's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action. See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985).

OPINION

The requirements of 37 CFR 1.137(a) are not met for revival of this application. The petition includes payment of the required petition fee. As this utility application was filed after June 8, 1995, no terminal disclaimer is required. At issue are the requirements for the required reply to the outstanding Office action and a showing to the satisfaction of the Director that

the entire delay in filing the required reply was unavoidable. These latter requirements are not met.

Petitioner provides the required reply in the form of a paper entitled "REQUEST FOR A COMPLETE OFFICE ACTION (with RCE or Continuing Application Authorization Should One Be Necessary)." It is not appropriate to provide alternative replies, especially given that no alternative continuing application has been filed. Petitioner is advised that if a submission is accompanied by a "conditional" RCE and payment of the RCE fee under 37 CFR 1.17(e) (i.e., an authorization to charge the 37 CFR 1.17(e) fee to a deposit account in the event that the submission would not otherwise be entered), the Office will treat the "conditional" RCE and payment as if an RCE and payment of the fee set forth in 37 CFR 1.17(e) had been filed. Accordingly, clarification of the reply submitted on petition is required.

Most importantly, petitioner has not met his burden of establishing that the entire delay in filing this reply was unavoidable. In this instance, the six-month period expired without petitioner filing any reply to the Office action mailed August 4, 2010. It appears that, notwithstanding the statutory period for reply, petitioner waited based on conversations with the examiner for the final Office action to be re-mailed and the period for reply restarted. However, this did not occur.

Upon the mailing of the final rejection on August 4, 2010, petitioner had to take action (including any extensions of time) to avoid abandonment of the application by February 4, 2011. Petitioner allowed the period for response to expire without taking further action in the application. Rather, petitioner relied on oral assurances from the examiner.

Petitioner was not permitted to disregard the final Office action even if it was incorrect. By operation of law, pursuant to 35 U.S.C. 133, upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

Petitioner did not file the written reply requesting a complete Office action until this petition was filed. The failure to

file a written response within the six month period is not a situation deemed to be unavoidable. The reliance on worthy and reliable employees, referred to in MPEP 711.03 as a basis for showing unavoidable delay, extends not to alleged oral promises of USPTO employees, but rather refers to the actions of the applicant's employees or agents. For example, an error by an employee may serve as the basis for a showing of unavoidable delay where it is shown that the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care. Continuing to rely on a USPTO employee to re-mail an Office action and restart a period for reply from September 2010 to February 2011, the end of the statutory period, does not represent the exercise of due care. The examiner has no authority to extend the statutory period for reply to an Office action. Further, it is well-established that applicant's reliance upon oral advice from USPTO employees will not excuse their failure to prosecute, yet applicant continued to rely and did not file a written objection. As stated in 37 CFR 1.2, all business with the Patent and Trademark Office should be transacted in writing. .. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

As petitioner has not provided the required reply to the Office action and has not met his burden of establishing that the delay was unavoidable, the petition under 37 CFR 1.137(a) must be dismissed.

CONCLUSION

While petitioner has not met the requirements for revival under 37 CFR 1.137(a), petitioner is not precluded from obtaining relief by filing a petition based on unintentional delay, pursuant to 37 CFR 1.137(b).

Petitioner should not delay filing a petition pursuant to 37 CFR 1.137(b) (or a renewed petition under 37 CFR 1.137(a)) as applicant bears the burden of establishing that the entire delay, including the delay from the due date for the reply until the filing of a grantable petition, was unintentional (or unavoidable).

Further correspondence with respect to this decision should be addressed as follows:

By mail:

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

By fax:

(571) 273-8300

ATTN: Office of Petitions

By hand:

Customer Service Window

Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.

Nancy Johnson

Sentior Petations Attorney

Office of Petitions





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Paper No.

THE LAW OFFICE OF JOHN A. GRIECCI 703 PIER AVE., SUITE B #657 HERMOSA BEACH CA 90254

MAILED

OCT 24 2011

OFFICE OF PETITIONS

In re Application Of

Larry Hayashigawa :

DECISION ON PETITION

Filed: May 30, 2006

Application No. 11/444,120 : Atty Docket No. AVI1024-01US :

This is a decision on the RENEWED PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT filed October 14, 2011.

:

The petition is **GRANTED**.

The above-identified application became abandoned effective November 5, 2010 for failure to file a timely and proper reply to the final Office action mailed August 4, 2010. A courtesy Notice of Abandonment was mailed on March 15, 2011. By decision mailed August 22, 2011, the prior petition to revive based on unavoidable delay under 37 CFR 1.137(a) was dismissed. The circumstances of the abandonment were considered, and it was determined that it had not be shown that the delay was unavoidable within the meaning of 37 CFR 1.137(a). In addition, clarification was required as to applicant's "required reply to the outstanding Office action" as alternative replies were submitted.

In response, applicants filed the instant petition, requesting revival based on the less stringent standard of unintentional delay. The petition includes the required reply in the form of a "Request for a Complete Office Action." It has been specifically determined that the required reply is sufficient for purposes of revival of this application. See 35 USC 132 and Chester v. Miller, 15 USPQ2d 1333, 1337 (Fed. Cir 1990) "Section 132 is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection. See, e.g., In re Wilke, 314 F.2d 558,

562, $\underline{136}$ USPQ 435, $\underline{439}$ (CCPA 1963)." The petition also includes payment of the petition fee and the required statement of unintentional delay. All requirements of 37 CFR 1.137(b) have been met.

Technology Center AU 1729 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the "Request for a Complete Office Action" filed October 14, 2011 in response to the final Office action mailed August 4, 2010.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.

/NancyJohnson/

Nancy Johnson Senior Petitions Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Swiss Tanner, P.C. P.O. Box 1749 Four Main Street, Suite 100 Los Altos CA 94022

In re Application of
Yang

Application No.: 11/444,150

Filed: May 30, 2006

Attorney Docket No.05367-2701

MAILED

SEP 2 0 2010

OFFICE OF PETITIONS

:DECISION ON APPLICATION

:FOR ADJUSTMENT

: PATENT TERM ADJUTSMENT

:

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705" filed September 8, 2010, which is properly treated under 37 CFR 1.705(b). Applicant requests that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected from seventy-five (75) days to sixteen (16) days.

The request for review of determination of the patent term adjustment is **GRANTED IN PART**.

The Office has updated the PALM and PAIR screens to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **forty-eight** (48) days. A copy of the updated PALM screen, showing the corrected determination, is enclosed.

On August 5, 2010, a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) was mailed indicating that the patent term adjustment to date was 75 days. On September 8, 2010, applicant submitted the instant petition. Applicant asserts the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed August 5, 2010, is incorrect. Specifically, applicant states that:

Applicant notes that a first Response to the Final Office Action mailed on November 7, 2008 was submitted to USPTO on December 24, 2008. Upon receiving an Advisory Action mailed on January 16, 2009, a second Response was filed on February 6, 2009. A third Response was filed on April 7, 2009 with a Notice of Appeal after receiving another Advisory Action issued on March 9, 2009. Applicant believes that this incurs an Applicant Delay of 59 days.

However, the USPTO's determination of PTA does not reflect this Applicant Delay.

Excerpt taken from, "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705" filed September 8, 2010, pgs. 1-2.

It is determined that applicant should have been assessed a delay under 37 CFR 1.704(b) for filing a reply in excess of the three month period from the November 7, 2008, mailing date of the final Office. On November 7, 2008, a final Office action was mailed. On December 24, 2008, and February 6, 2009, applicant filed amendments which the examiner determined did not place the application in condition for allowance; therefore, the time period running under 37 CFR 1.704(b) was not tolled. On April 7, 2009, applicant filed a Notice of Appeal; this filing tolled the time period running pursuant to 37 CFR 1.704(b). Accordingly, the period of adjustment set forth in § 1.703 should have been reduced under 37 CFR 1.704(b) by 31 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the final Office action, March 8, 2009, and ending on the date the Notice of Appeal was filed, April 7, 2009. A period of reduction of 31 days will be entered.

A review of the application file history reveals that an entry of an additional adjustment to the patent term under 37 CFR 1.702(a)(2) and 37 CFR 1.703(a)(2) is warranted. A response to a non-final Office action was filed April 11, 2008. A final Office action was not mailed until August 15, 2009—four months

With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

¹ 37 CFR 1.704(b) states:

and 4 days after the response was filed. Accordingly, a period of adjustment pursuant to 37 CFR 1.702(a)(2) and 37 CFR 1.703(a)(2) of 4 days will entered with said period beginning on the day after the date that is four months after the date a reply under 1.111 was filed, August 12, 2008, and ending on the date of mailing of the final Office action August 15, 2008.

In view thereof, the determination of the patent term adjustment at the time of the mailing of the notice of allowance is 48 days (81 days of Office delay - 33 days of Applicant delay).

Deposit account 50-4972 will be charged \$200.00 fee for the fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Applicants are reminded that any delays by the Office pursuant to $37\ \text{CFR}\ 1.702(a)\ (4)$ and 1.702(b) and any applicant delays under $37\ \text{CFR}\ 1.704(c)\ (10)$ will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

Telephone inquiries regarding this specific matter should be directed to the undersigned at (571) 272-3222.

Kenya A. MeLaughlin Petitions Attorney Office of Petitions

Enclosure: Copy of REVISED PALM screen



Patent Term

Adjustments

PTA/PTE Information Patent Term Adjustment

Patent Term Extension

Θ

ⅎ

Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 11444150

OverLapping Days Between (A and B) or (A and C) 0	Application Filing Date 05/30,
Non-Overlapping USPTO Delays: 77	Issue Date of Patent
PTO Manual Adjustment -27	A Delays 77
Applicant Delay (APPL) 2	B Delays 0
Total PTA (days) 48	C Delays 0

* - Sorted Column

File	Conte	nts H	listor	y
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Application Number*: 11444150

Action Number	Action Recorded Date	Action Due Date	Action Code	<u>Action</u> Description	Duration Duration Activ PTO APPL Numl
139	09/16/2010		P028	Adjustment of PTA Calculation by PTO	4 0
138	09/16/2010		P028	Adjustment of PTA Calculation by PTO	<u>23</u> 0
127	08/05/2010		MN/=.*	Mail Notice of Allowance	0
126	08/03/2010		IREV	Issue Revision Completed	0
L25	08/03/2010		DVER	Document Verification	0
124	07/30/2010		N/=.	Notice of Allowance Data Verification Completed	0
123	07/30/2010		CNTA	Notice of Allowability	O
L14	06/17/2010		FWDX	Date Forwarded to Examiner	0
L17	06/09/2010		IDSC	Information Disclosure Statement considered	0
L13	06/09/2010		A	Response after Non-Final Action	0
112	06/09/2010		M844	Information Disclosure Statement (IDS) Filed	0
111	06/09/2010		WIDS	Information Disclosure Statement (IDS) Filed	0
110	03/18/2010		MCTNF	Mail Non-Final Rejection	· O
109	03/15/2010		CTNF	Non-Final Rejection	0
107	12/01/2009		FWDX	Date Forwarded to Examiner	0
106	11/25/2009		A	Response after Non-Final Action	0
105	11/25/2009		PA	Change in Power of Attorney (May Include Associate POA)	0
104	11/23/2009		C.AD	Correspondence Address Change	0
103	10/23/2009		MPTGR	Mail-Petition Decision - Granted	0
102	10/23/2009		PTGR	Petition Decision - Granted	. 0
100	10/14/2009		MCTNF	Mail Non-Final Rejection	0
9	10/13/2009		CTNF	Non-Final Rejection	0
95	10/06/2009		DOCK	Case Docketed to Examiner in GAU	0
4	08/18/2009		MP033	Mail-Petition Decision - Granted	0
3	08/18/2009		P033	Petition Decision - Granted	0
12	08/17/2009		C.AD	Correspondence Address Change	0
1	08/04/2009		FWDX	Date Forwarded to Examiner	0
9	08/04/2009		FWDX	Date Forwarded to Examiner	0
37	08/04/2009		ABN9	Disposal for a RCE / CPA / R129	0
0	07/31/2009		AMPR	RCE- AF Processed	0
18	07/31/2009		RCEX	Request for Continued Examination (RCE)	0
36	07/31/2009		BRCE	Workflow - Request for RCE - Begin	0
	07/24/2009		MCTAV	Mail Advisory Action (PTOL - 303)	0
	07/23/2009		CTAV	Advisory Action (PTOL-303)	0
01	07/14/2009		PET.	Petition Entered	0
	07/14/2009		PET.	Petition Entered	0
	07/13/2009		FWDX	Date Forwarded to Examiner	0
	07/01/2009		A.NE	Amendment after Final Rejection	0
'9 '2	04/30/2009		CTFR	Final Rejection	0
	04/10/2009		FWDX	Date Forwarded to Examiner	0
'1 '0	04/07/2009		AP/A	Amendment/Argument after Notice of Appeal	0
	04/07/2009		N/AP	Notice of Appeal Filed	0
	04/07/2009		XT/G MEXIN	Request for Extension of Time - Granted	0
	04/07/2009			Mail Examiner Interview Summary (PTOL - 413)	0
	04/01/2009 03/09/2009		EXIN MCTAV	Examiner Interview Summary Record (PTOL - 413) Mail Advisory Action (PTOL - 303)	0
	03/06/2009		CTAV	Advisory Action (PTOL - 303)	Ö
-	02/09/2009		FWDX	Date Forwarded to Examiner	0
	02/09/2009		A.NE	Amendment after Final Rejection	0
			MCTAV		Ö
	01/16/2009		CTAV	Mail Advisory Action (PTOL - 303) Advisory Action (PTOL-303)	Ö
	01/16/2009 01/06/2009		FWDX	Date Forwarded to Examiner	Ö
	12/24/2008		A.NE	Amendment after Final Rejection	0
	14/44/4008		M.RE	Amendment after rinal Rejection	v
	11/07/2008		MCTFR	Mail Final Rejection (PTOL - 326)	0

54	10/20/2008		FWDX	Data Famusadad ta Fuancias			o
53				Date Forwarded to Examiner			
52	10/15/2008	00/44/2000	A.NE	Amendment after Final Rejection	_		0
	08/15/2008	08/11/2008		Mail Final Rejection (PTOL - 326)	4		47
51	08/13/2008		CTFR	Final Rejection			0
48	05/06/2008		FWDX	Date Forwarded to Examiner			0
47	04/11/2008		A	Response after Non-Final Action			•
46	02/05/2008		DOCK	Case Docketed to Examiner in GAU			0
45	01/14/2008		MCTNF	Mail Non-Final Rejection			0
44	01/14/2008		CTNF	Non-Final Rejection			•
35	12/03/2007		FWDX	Date Forwarded to Examiner			•
40	11/15/2007		IDSC	Information Disclosure Statement considered			0
32	11/15/2007	11/13/2007	M844	Information Disclosure Statement (IDS) Filed		2	34
29	11/15/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
34	11/13/2007		ELC.	Response to Election / Restriction Filed			0
41	10/24/2007		IDSC	Information Disclosure Statement considered			0
27	10/24/2007		RCAP	Reference capture on IDS			0
26	10/24/2007		M844	Information Disclosure Statement (IDS) Filed			0
24	10/24/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
23	10/11/2007	07/30/2007	MCTRS	Mail Restriction Requirement	73		-1
22	10/10/2007		CTRS	Requirement for Restriction / Election			0
21	10/09/2007		DOCK	Case Docketed to Examiner in GAU			•
18	07/11/2007		DOCK	Case Docketed to Examiner in GAU			0
17	04/26/2007			PG-Pub Issue Notification			ō
43	12/14/2006		IDSC	Information Disclosure Statement considered			0
42	12/14/2006		IDSC	Information Disclosure Statement considered			0
16.7	12/14/2006		M844	Information Disclosure Statement (IDS) Filed			ō
16	12/14/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
15	12/14/2006		RCAP	Reference capture on IDS			
14.7	12/14/2006		M844	Information Disclosure Statement (IDS) Filed			ŏ
14	12/14/2006		WIDS	Information Disclosure Statement (IDS) Filed			ا ه
13	10/20/2006		DOCK	Case Docketed to Examiner in GAU			. 1
12	09/09/2006		TSSCOMP	IFW TSS Processing by Tech Center Complete			.
11	09/08/2006		OIPE	Application Dispatched from OIPE			, l
10	09/08/2006		COMP	Application Dispatched from OIPE Application Is Now Complete			6
9	08/25/2006		FLFEE	Payment of additional filing fee/Preexam			,
•	08/23/2008		FLFEE	· ·			١ ١
8	08/25/2006		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
7	08/25/2006		CORRDRW	Applicant has submitted new drawings to correct Corrected Papers problems			o ,
6	06/22/2006		INCD	Notice MailedApplication IncompleteFiling Date Assigned			0
5	06/09/2006		L128	Cleared by L&R (LARS)			0
4	06/07/2006		L198	Referred to Level 2 (LARS) by OIPE CSR			0
3	06/07/2006		CLSS	CASE CLASSIFIED BY OIPE			0
2	06/06/2006		SCAN	IFW Scan & PACR Auto Security Review			0
1	05/30/2006		IEXX	Initial Exam Team on			0

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FOLEY & LARDNER LLP 975 PAGE MILL ROAD Palo Alto CA 94304

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DEC 2 0 2010
OFFICE OF PETITIONS

In re Application of

Yang

Application No. 11/444,150

(48) days to sixteen (16) days.

: DECISION ON APPLICATION : FOR

Filed: May 20, 2006
Atty Docket No. 056367-2701

: PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR § 1.705," filed September 23, 2010, which is properly treated under 37 CFR 1.705(b). Applicants request that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected from forty-eight

The application for patent term adjustment is GRANTED.

The Office has updated the PALM and PAIR screens to reflect that the patent term adjustment determination at the time of the mailing of the notice of allowance is **sixteen (16)**. A copy of the updated PAIR screen, showing the corrected determination, is enclosed.

On August 5, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 75 days. Applicants timely filed a petition under 37 CFR 1.705(b) on September 8, 2010. As decision on the petition was mailed September 20, 2010. Applicants now file the instant request for reconsideration.

Applicants' arguments have been considered and are well taken. The reduction to the patent term adjustment for the filing of a response on April 7, 2009, three months and fifty-nine after a final Office action was mailed on November 7, 2008 is accurate. It is further noted that the reduction to the patent term

adjustment of four days was entered twice. Accordingly, a period of 4 days will be removed from the calculation of the patent term adjustment.

In view thereof, the patent term adjustment at the time of the mailing of the Notice of Allowance is 16 days.

The \$200.00 fee as set forth in 37 CFR 1.18(e) was received. No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to $37\ \text{CFR}\ 1.702(a)(4)$ and 1.702(b) and any applicant delays under $37\ \text{CFR}\ 1.704(c)(10)$ will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin/ Petitions Attorney Office of Petitions

Enclosure: Copy of REVISED PAIR Screen



PTA/PTE Information Patent Term Adjustment

Patent Term Extension

Application Number *: 11444150 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 11444150

_		
	Application Filing Date 05/30/2006	OverLapping Days Between (A and B) or (A and C) 0
_	Issue Date of Patent	Non-Overlapping USPTO Delays: 77
	A Delays 77	PTO Manual Adjustment -59
	B Delays 0	Applicant Delay (APPL) 2
L	C Delays 0	Total PTA (days) 16

* - Sorted Column

File Contents History	File	Contents	History	
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Action Number	Action Recorded Date	Action Due Date	Action Code	<u>Action</u> <u>Description</u>	Duration PTO	Duration APPL	Paren Actio Numb
44	12/13/2010		P028	Adjustment of PTA Calculation by PTO		32	0
40	09/20/2010		P025	Record a Petition Decision of Granted for Patent Term Adjustment after Allowance			0
39	09/16/2010		P028	Adjustment of PTA Calculation by PTO		4	0
38	09/16/2010		P028	Adjustment of PTA Calculation by PTO		23	o
27	08/05/2010		MN/=.	Mail Notice of Allowance			0
26	08/03/2010		IREV	Issue Revision Completed			0
25	08/03/2010		DVER	Document Verification			0
24	07/30/2010		N/=.	Notice of Allowance Data Verification Completed			0
23	07/30/2010		CNTA	Notice of Allowability			0
14	06/17/2010		FWDX	Date Forwarded to Examiner			0
17	06/09/2010		IDSC	Information Disclosure Statement considered			0
13	06/09/2010		A	Response after Non-Final Action			0
12	06/09/2010		M844	Information Disclosure Statement (IDS) Filed			0
11	06/09/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
10	03/18/2010		MCTNF	Mail Non-Final Rejection			0
09	03/15/2010		CTNF	Non-Final Rejection			0
07	12/01/2009		FWDX	Date Forwarded to Examiner			0
06	11/25/2009		A	Response after Non-Final Action			0
05	11/25/2009		PA	Change in Power of Attorney (May Include Associate POA)			0
04	11/23/2009		C.AD	Correspondence Address Change			0
03	10/23/2009		MPTGR	Mail-Petition Decision - Granted			0
02	10/23/2009		PTGR	Petition Decision - Granted			0
00	10/14/2009		MCTNF	Mail Non-Final Rejection			0
9	10/13/2009		CTNF	Non-Final Rejection			0
5	10/06/2009		DOCK	Case Docketed to Examiner in GAU			0
4	08/18/2009		MP033	Mail-Petition Decision - Granted			0
3	08/18/2009		P033	Petition Decision - Granted			0
2	08/17/2009		C.AD	Correspondence Address Change			oʻ
1	08/04/2009		FWDX	Date Forwarded to Examiner			0
9	08/04/2009		FWDX	Date Forwarded to Examiner			0
7	08/04/2009		ABN9	Disposal for a RCE / CPA / R129			0
0	07/31/2009		AMPR	RCE- AF Processed			0
8	07/31/2009		RCEX	Request for Continued Examination (RCE)			0
6	07/31/2009		BRCE	Workflow - Request for RCE - Begin			0
5	07/24/2009		MCTAV	Mail Advisory Action (PTOL - 303)			0
3	07/23/2009		CTAV	Advisory Action (PTOL-303)			0 ^
01	07/14/2009		PET.	Petition Entered			0
4	07/14/2009		PET.	Petition Entered			0
2	07/13/2009		FWDX	Date Forwarded to Examiner			0
1	07/01/2009		A.NE	Amendment after Final Rejection			0
9	04/30/2009		CTFR	Final Rejection			o
2	04/10/2009		FWDX	Date Forwarded to Examiner			0
1	04/07/2009		AP/A	Amendment/Argument after Notice of Appeal			0
0	04/07/2009		N/AP	Notice of Appeal Filed			0
9	04/07/2009		XT/G	Request for Extension of Time - Granted			0
8	04/07/2009		MEXIN	Mail Examiner Interview Summary (PTOL - 413)		•	0
7	04/01/2009		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
6	03/09/2009		MCTAV	Mail Advisory Action (PTOL - 303)			0
5	03/06/2009		CTAV	Advisory Action (PTOL-303)			0
4	02/09/2009		FWDX	Date Forwarded to Examiner			0
3	02/06/2009		A.NE	Amendment after Final Rejection			0
2	01/16/2009		MCTAV	Mail Advisory Action (PTOL - 303)			0
1	01/16/2009		CTAV	Advisory Action (PTOL-303)			0
0	01/06/2009		FWDX	Date Forwarded to Examiner			0
9	12/24/2008		A.NE	Amendment after Final Rejection			0

1								- 1
58	11/07/2008		MCTFR	Mail Final Rejection (PTOL - 326)			0	
57	11/07/2008		CTFR	Final Rejection			0	
54	10/20/2008		FWDX	Date Forwarded to Examiner			0	
53	10/15/2008		A.NE	Amendment after Final Rejection			0	
52	08/15/2008	08/11/2008	MCTFR	Mail Final Rejection (PTOL - 326)	4		47	- 1
51	08/13/2008		CTFR	Final Rejection			0	ļ
48	05/06/2008		FWDX	Date Forwarded to Examiner			0	
47	04/11/2008		A	Response after Non-Final Action			0	- 1
46	02/05/2008		DOCK	Case Docketed to Examiner in GAU			0	
45	01/14/2008		MCTNF	Mail Non-Final Rejection			0	
44	01/14/2008		CTNF	Non-Final Rejection			0	
35	12/03/2007		FWDX	Date Forwarded to Examiner			0	
40	11/15/2007		IDSC	Information Disclosure Statement considered			0	
32	11/15/2007	11/13/2007	M844	Information Disclosure Statement (IDS) Filed		2	34	
29	11/15/2007	•	WIDS	Information Disclosure Statement (IDS) Filed			0	
34	11/13/2007		ELC.	Response to Election / Restriction Filed			0	
41	10/24/2007		IDSC	Information Disclosure Statement considered			0	
27	10/24/2007		RCAP	Reference capture on IDS			0	
26	10/24/2007		M844	Information Disclosure Statement (IDS) Filed			0	
24	10/24/2007		WIDS	Information Disclosure Statement (IDS) Filed			0	1
23	10/11/2007	07/30/2007	MCTRS	Mail Restriction Requirement	73		-1	- 1
22	10/10/2007		CTRS	Requirement for Restriction / Election			0	
21	10/09/2007		DOCK	Case Docketed to Examiner in GAU			0	
18	07/11/2007		DOCK	Case Docketed to Examiner in GAU			0	
17	04/26/2007		PG-ISSUE	PG-Pub Issue Notification			0	
43	12/14/2006		IDSC	Information Disclosure Statement considered			0	
42	12/14/2006		IDSC	Information Disclosure Statement considered			0	-
16.7	12/14/2006		M844	Information Disclosure Statement (IDS) Filed			0	- 1
16	12/14/2006	,	WIDS	Information Disclosure Statement (IDS) Filed			0	- 1
15	12/14/2006		RCAP	Reference capture on IDS			Ō	
14.7	12/14/2006		M844	Information Disclosure Statement (IDS) Filed			0	
14	12/14/2006		WIDS	Information Disclosure Statement (IDS) Filed			Ō	
13	10/20/2006		роск	Case Docketed to Examiner in GAU			ō	
12	09/09/2006		TSSCOMP	IFW TSS Processing by Tech Center Complete			Ō	
11	09/08/2006		OIPE	Application Dispatched from OIPE		- (ō	
10	09/08/2006		COMP	Application Is Now Complete			0	- 1
9	08/25/2006		FLFEE	Payment of additional filing fee/Preexam			Ō	
8	08/25/2006		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0	
7	08/25/2006		CORRDRW	Applicant has submitted new drawings to correct Corrected Papers problems			0	
6	06/22/2006		INCD	Notice MailedApplication IncompleteFiling Date Assigned			0	ļ
5	06/09/2006		L128	Cleared by L&R (LARS)			0	1
4	06/07/2006		L198	Referred to Level 2 (LARS) by OIPE CSR			0	
3	06/07/2006		CLSS	CASE CLASSIFIED BY OIPE			0	ł
2	06/06/2006		SCAN	IFW Scan & PACR Auto Security Review			0	
1	05/30/2006		IEXX	Initial Exam Team on			0	

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NAME:



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Ronald C. Fedus c/o ENZO BIOCHEM, INC. 9th Floor 527 Madison Avenue New York NY 10022-4304

JAN 25 2012 OFFICE OF PETITIONS

In re Application of : DECISION ON PETITION Rabbani et al. : UNDER 37 CFR 1.78(a)(3)

Application No. 11/444,151

Filed: May 31, 2006
Attorney Docket No. Enz60(CIP2)

This is a decision on the PETITION TO ACCEPT AN UNINTENTIONALLY DELAYED CLAIM FOR PRIORITY UNDER 35 U.S.C. \$ 120 filed December 29, 2011, to accept an unintentionally delayed claim to priorfiled application nos. 10/096,076, 10/693,481 and 09/896,897.

The petition is GRANTED.

A petition for acceptance of a claim for late priority under 37 CFR \S 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR \S 1.78(a)(2)(ii), and must be filed during the pendency of the nonprovisional application. In addition, the petition under 37 CFR \S 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR § 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii), and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The instant application was filed after November 29, 2000. A review of the application as filed reveals that the claim for priority set forth on petition was not submitted on filing in the first sentence of the specification or in an application data sheet. The four and sixteen-month periods specified in 37 CFR §§ 1.78(a)(2)(ii) expired without proper claims being made. In addition, the petition includes the required statement of unintentional delay and the required surcharge.

A reference to the prior-filed nonprovisional applications is included in an amendment, as required by 37 CFR 1.78(a)(2)(iii), filed May 17, 2011 (not May 6, 2011 as noted in the amendment filed January 3, 2012).

Accompanying the amendment is a request for continued examination (RCE), which is properly submitted for consideration of the amendment after mailing of a final Office action.

With respect to 35 U.S.C. 120 and 37 CFR 1.78(a)(3), the amendment includes references to prior-filed application Nos. 10/096,076 and 10/693,481, with the relationship of each stated as continuation-in-part. Further, the amendment states that the '481 application is a continuation-in-part of application No. 09/896,897. Moreover, a review of the '481 application confirms that the claim was properly made in that application to the '897 application. Finally, there was the required copendency between the applications.

All of the above requirements having been satisfied, the late claim for benefit of priority to the prior-filed application under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR § 1.78(a) (3) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §§120 and 1.78(a) (1) and (a) (2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course,

consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3219. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being referred to Technology Center Art Unit 1637 for consideration by the examiner of the claim for benefit of priority under 35 U.S.C. §120 of the prior-filed applications as set forth in the amendment filed May 17, 2011.

Nancy Johnson

Senior Petitions Attorney

Office of Petitions

ATTACHMENT: Corrected Filing Receipt



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Viginia 22313-1450 www.ustot.cov

i	APPLICATION	FILING or	GRP-ART				
١	NUMBER	371(c) DATE	UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
	11/444.151	05/31/2006	1637	5770	Enz-60(CIP2)	159	12

Ronald C. Fedus c/o ENZO BIOCHEM, INC. 9th Floor 527 Madison Avenue New York, NY 10022-4304 CONFIRMATION NO. 4296
CORRECTED FILING RECEIPT



Date Mailed: 01/25/2012

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections

Applicant(s)

Elazar Rabbani, New York, NY; James J. Donegan, Long Beach, NY;

Assignment For Published Patent Application

Enzo Life Sciences, Inc.

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CIP of 10/096,076 03/12/2002 and is a CIP of 10/693,481 10/24/2003 which is a CIP of 09/896.897 06/30/2001 ABN

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 06/22/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/444,151**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

** SMALL ENTITY **

page 1 of 3

Title

Dual polarity analysis of nucleic acids

Preliminary Class

435

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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BIOTECHNOLOGY LAW GROUP 12707 HIGH BLUFF DRIVE SUITE 200 SAN DIEGO, CA 92130-2037

MAILED
DEC 222010
OFFICE OF PETITIONS

In re Application of Dong-Hua Ke, et al. Application No. 11/444,171 Filed: May 31, 2006 Attorney Docket No. IVGN 250

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) filed November 9, 2010.

The request is **NOT APPROVED**.

The Office will no longer approve requests from practitioners to withdraw from application where the requesting practitioners is acting, or has acted, in a representative capacity pursuant to 37 CFR 1.34. In these situations, the practitioner is responsible for the correspondence the practitioner files in the application while acting in a representative capacity. As such, there is no need for the practitioner to obtain the Office's permission to withdraw from representation. However, practitioners acting in a representative capacity, like practitioners who have power of attorney in the application, remain responsible for noncompliance with 37 CFR 1.56, as well as 37 CFR 10.18, with respect to the documents they file.

A review of the file record indicates that BioTechnology Law Group does not have power of attorney in this patent application. See 37 C.F.R. § 10.40. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

Petitioner should note that the Office will no longer accept address changes to a new practitioner of law firm filed with a Request, absent the filing of a power of attorney to the new representative. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest, who properly became of record under 37 CFR 3.71 or, the most current address information provided for the first named inventor.

Accordingly, the request to withdraw from record does not include an acceptable current correspondence address for future communications from the Office.

Petitioner should also note that there was never a power of attorney filed in this application and the acceptance of the attorney listed in the attorney/agent was processed in error.

All future communications from the Office will continue to be directed to the above-listed address until otherwise properly notified by the applicant.

There is an outstanding Office action mailed November 5, 2010 that requires a reply by applicant.

Telephone inquires concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/ April M. Wise Petitions Examiner Office of Petitions



Commissioner for Patent's United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

www.uspto.gov

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP 390 LYTTON AVENUE PALO ALTO, CA 94301

MAILED APR 07 2011 OFFICE OF PETITIONS

In re Application of

EAGLE, Scott G. et al.

Application No. 11/444,172

Filed: March 30, 2006

Attorney Docket No. 4001-0015

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 08, 2011.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to Sheppard, Mullin, Richter & Hampton LLP has been revoked by the assignee of the patent application on February 07, 2011. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-4231.

Michelle R. Eason Paralegal Specialist Office of Petitions

cc:

helle L. Jar

DAVIDSON BERQUIST JACKSON & GOWDEY, LLP ATTN: CLARIA/DR. BRIAN SIRITZKY, ESQ. 4300 WILSON BLVD., 7TH FLOOR ARLINGTON VA 22203



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Decision Date : December 1, 2011

In re Application of : DECISION ON REQUEST TO WITHDRAW AS

Scott Eagle ATTORNEY/AGENTOF RECORD

Application No : 11444172 Filed : 30-May-2006

Attorney Docket No: 4001-0015

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR§ 1.36(b), filed December 1, 2011

The request is **APPROVED**

The request was signed by Brian Siritzky (registration no. 37497) on behalf of all attorneys/agents associated with Customer Number 91944 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with Customer number 86636

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions

		PTO/SB/83
Doc Code: PET.AUTO Document Description: Petitio	n automatically granted by EFS-Web	U.S. Patent and Trademark Office Department of Commerce
Electronic Petition Request	REQUEST FOR WITHDRAWAL AS ATTORIC CORRESPONDENCE ADDRESS	NEY OR AGENT AND CHANGE OF
Application Number	11444172	
Filing Date	30-May-2006	
First Named Inventor	Scott Eagle	
Art Unit	2175	
Examiner Name	THANH VU	
Attorney Docket Number	4001-0015	
Title	Method and apparatus for displaying mes	sages in computer systems
The reason(s) for this request a 10.40(b)(4) Certifications	re those described in 37 CFR:	
	le notice to the client, prior to the expiration of the mployment	e response period, that the practitioner(s)
I/We have delivered to the to which the client is entitle	e client or a duly authorized representative of the e	client all papers and property (including funds)
	ent of any responses that may be due and the time	frame within which the client must respond
Change the correspondence add	dress and direct all future correspondence to: ed inventor or assignee that has properly made it:	
Change the correspondence add The address of the first nam 37 CFR 3.71, associated with Cus	dress and direct all future correspondence to: ed inventor or assignee that has properly made it:	
Change the correspondence add The address of the first nam 37 CFR 3.71, associated with Cus	dress and direct all future correspondence to: ed inventor or assignee that has properly made its tomer Number:	
Change the correspondence add The address of the first nam 37 CFR 3.71, associated with Cus I am authorized to sign on behal	dress and direct all future correspondence to: ed inventor or assignee that has properly made its tomer Number: f of myself and all withdrawing practitioners.	



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Alexandria, VA 22313-1450
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FOLEY & LARDNER LLP 150 EAST GILMAN STREET P.O. BOX 1497 MADISON WI 53701-1497

MAILED
MAY 192011
OFFICE OF PETITIONS

In re Application of

Amine et al.

Application No. 11/444219

Filing or 371(c) Date: 05/31/2006

Atty Docket No.:

051583-0343

: ON REQUEST FOR

: RECONSIDERATION OF

: PATENT TERM ADJUSTMENT

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICAITON, filed April 8, 2011. Applicants submit that the correct Patent Term Adjustment is 1170 days, not 812 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent. The application for patent term adjustment is properly treated under 37 C.F.R. § 1.705(b).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is

advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee¹.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and *must* include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions

For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

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HENNEMAN & ASSOCIATES, PLC 70 N. MAIN ST. THREE RIVERS MI 49093 MAILED

DEC 07 2011

In re Application of

Shangguan et al.

Application No. 11/444,277

Filed: May 31, 2006

Attorney Docket No. 0025-027

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 23, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely submit the issue and publication fees, as required by the Notice of Allowance and Fee (s) Due, which was mailed August 18, 2011. The Notice of Allowance and Fee (s) Due and the Notice of Allowability set a three (3) month statutory period for reply. Extensions of time were not available under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on November 19, 2011. A Notice of Abandonment was mailed on November 30, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the \$1740 issue and publication fees of \$300, (2) the petition fee of \$1860; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

This application is being referred to the Office of Data Management for further processing.

Charlema Grant

Petitions Attorney

Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Booth Udall, PLC 1155 W Rio Salado Parkway Suite 101 Tempe AZ 85281

MAILED

NOV 2 5 2011
OFFICE OF PETITIONS

In re Application of

BOYD et al.

Application No. 11/444,314

Filed: 06/01/2006

Attorney Docket No. 1180.5067

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 5, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed March 23, 2011, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 24, 2011. A Notice of Abandonment was mailed on October 3, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee, and (3) a proper statement of unintentional delay.

This application is being referred to Technology Center AU 3695 for appropriate action by the Examiner on the reply received on October 5, 2011.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell Senior Petitions Attorney

C. J. Donnell

Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Stephen R. Greiner, Esquire GREINER LAW OFFICES, P.C. Suite 110 6701 Democracy Blvd. Bethesda MD 20817

MAILED

AUG 27 2010

In re Application of

Jason Myles Cobb

Application No. 11/444,322

Filed: June 1, 2006

Attorney Docket No. 3982.01

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 28, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before April 14, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed January 14, 2010. Accordingly, the date of abandonment of this application is April 15, 2010. A Notice of Abandonment was mailed on April 29, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of \$755 and the publication fee of \$300, (2) the petition fee of \$810, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the petition is being construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is not a correct interpretation of the statement contained in the petition.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to the Office of Data Management for further processing into a patent.

/Kimberly A. Inabinet/

Kimberly A. Inabinet Petitions Examiner Office of Petitions

		Paper No.:	_
DATE	:01/31/12	· ·	
TO SPE OF	: ART UNIT _	3852	
SUBJECT	: Request for Certifi	ficate of Correction for Appl. No.: 11/444.391 Patent No.: 7616912	
		CofC mailroom date: 08/11/1	1_
Please resp	ond to this reque	est for a certificate of correction within 7 days.	
FOR IFW F	ILES:		
he IFW app		I changes/corrections as shown in the COCIN document(s) in No new matter should be introduced, nor should the scope of anged.	
	plete the respons nent code COCX	se (see below) and forward the completed response to scani (.	ning
FOR PAPE	R FILES:		
		changes/corrections as shown in the attached certificate of this form (see below) and forward it with the file to:	
Rand	ficates of Correctory Solph Square – 9 Location 7580	ction Branch (CofC) 9D10-A	
Rand Palm	lolph Square – 9	es be made?	
Rand Palm	lolph Square – 9 Location 7580	es be made? RoChaun Hardwic	
Rand Palm	lolph Square – 9 Location 7580	PD10-A es be made? RoChaun Hardwic Certificates of Correction Branc	
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Rand Palm Note: Thank You The reques	lolph Square - 9 Location 7580 Should the change	PD10-A Pes be made? RoChaun Hardwic Certificates of Correction Brance tance above-identified correction(s) is hereby:	
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Rand Palm Note:	For Your Assist t for issuing the on the appropriate box. Approved in Pa	PD10-A RoChaun Hardwic Certificates of Correction Brance 571 272-0470 tance above-identified correction(s) is hereby: X Approved All changes apply. Specify below which changes do not apply.	
Rand Palm Note: Thank You The reques lote your decision	For Your Assist t for issuing the non the appropriate box. Approved in Pa	PD10-A Pes be made? POChaun Hardwic Certificates of Correction Brance 571 272-0470 Itance Per above-identified correction(s) is hereby: X Approved All changes apply. And Specify below which changes do not apply. State the reasons for denial below.	

PTOL-306 (REV. 7/03)

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U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office





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MCANDREWS HELD & MALLOY, LTD **500 WEST MADISON STREET SUITE 3400** CHICAGO IL 60661

MAILED NOV 0.5 2010 OFFICE OF PETITIONS

In re Application of

Choi et al.

Application No. 11/444394 ON APPLICATION FOR Filing or 371(c) Date: 06/01/2006 **RECONSIDERATION OF**

Atty Docket No.:

21549US01

PATENT TERM ADJUSTMENT

This is in response to the APPLICATION FOR RECONSIDERATION OF THE DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 CFR § 1.705), filed July 2, 2010. Applicant submits that the proper patent term adjustment to be indicated on the patent is 1085 days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent. The application for patent term adjustment is properly treated under 37 C.F.R. § 1.705(b).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED** as PREMATURE.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee¹.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and *must* include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions

For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the \\$1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 09/13/2010

TUCKER ELLIS & WEST LLP 1150 HUNTINGTON BUILDING 925 EUCLID AVENUE CLEVELAND, OH 44115-1414

Applicant : Giri Natarajan : DECISION ON REQUEST FOR Patent Number: 7657607 : RECALCULATION of PATENT

: TERM ADJUSTMENT IN VIEW Issue Date : 02/02/2010 Application No: 11/444,585 : OF WYETH AND NOTICE OF INTENT TO Filed : 06/01/2006 : ISSUE CERTIFICATE OF CORRECTION

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 448 days. The USPTO will sua sponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

BUSINESS OBJECTS AMERICAS; BUSINESS OBJECTS S.A. SAP AMERICA, INC.; BUSINESS OBJECTS SOFTWARE LTD. BUSINESS OBJECTS DATA INTEGRATION, INC. 777 6TH STREET NW, SUITE 1100, ATTN: B. GALLIANI WASHINGTON DC 20001

MAILED
APR 0 8 2011
OFFICE OF PETITIONS

In re Application of

MACGREGOR

Application No. 11/444,597

Filed: May 31, 2006

Attorney Docket No. BOBJ-088/00US 304661-2190

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 17, 2011.

FERRENCE IN

The request is **NOT APPROVED**.

The Office will either change the correspondence address of record to the most current address information provided for a new practitioner or law firm who has filed a proper power of attorney, the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor.

Accordingly, since the change of correspondence address is not that of a new practitioner or law firm who has filed a proper power of attorney in the Office, the request to withdraw from record cannot be approved.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

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/Diane C. Goodwyn/ Diane C. Goodwyn Petitions Examiner Office of Petitions

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KILPATRICK TOWNSEND & STOCKTON LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO CA 94111-3834

MAILEDDEC 1.5 2011

OFFICE OF PETITIONS

In re Application of

Evans et al.

Application No. 11/444,603

Filed: May 31, 2006

Attorney Docket No.90073-001810US-713099

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 7, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This above-identified application became abandoned for failure to timely file a reply to a non-final Office action mailed December 22, 2010. The Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on March 23, 2011. A Notice of Abandonment was mailed on June 9, 2011.

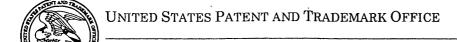
The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment (2) the petition fee of \$930.00, and (3) a statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

This application is being referred to Technology Center AU 3734 for appropriate action by the Examiner in the normal course of business on the reply received

Charlema Grant Attorney Advisor

Office of Petitions



PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

MAILED
SEP 0 8 2010
OFFICE OF PETITIONS

In re Application of **Curt BINNER**, et al.

Application No. 11/444,792

Filed: June 1, 2006

Attorney Docket No. PPC5073USCNT2

DECISION GRANTING PETITION

UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed September 2, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on March 17, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 1791 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/444,860	05/31/2006	Nagesh R. Basavanhally	BASAVANHALLY 38-2-11	7544
⁴⁷³⁹⁴ HITT GAINES	7590 03/06/2012 PC	EXAMINER		
ALCATEL-LU	CENT	CHEN, XIAOLIANG		
PO BOX 832570 RICHARDSON, TX 75083			ART UNIT	PAPER NUMBER
			2835	
				·
			NOTIFICATION DATE	DELIVERY MODE
			03/06/2012	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@hittgaines.com

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Hitt Gaines, P.C. P.O. Box 832570 Richardson, Texas 75083-2570

MAR 6 2012

In re Application of: Basavanhally et al.

Serial No.: 11/444,860 Filed: May 31, 2006

Attorney Docket No.: BASAVANHALLY 38-2-11

SUA SPONTE

DECISION WITHDRAWING HOLDING OF

ABANDONMENT

This is a decision, sua sponte, withdrawing the holding of abandonment of the above-identified application.

The application was held abandoned after the mailing of a Decision On Appeal, affirming the examiner, mailed on January, 17, 2012. A Notice of Abandonment was mailed on January 19, 2012.

The examiner did not wait the required two month time period to allow the applicant the opportunity to appeal the Board's decision.

In view of the above, it appears that the application was prematurely abandoned.

Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status and forwarded to the Examiner for further examination.

Inquiries related to this decision should be directed to Timothy J Thompson at (571) 272-2342.

Wynn Coggins, Director Technology Center 2800

Circuits/Measuring Testing



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LEE & HAYES, PLLC 601 W RIVERSIDE SUITE 1400 SPOKANE, WA 99201

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FEB 2 8 2011
OFFICE OF PETITIONS

In re Application of

Cohen et al.

Application No. 11/444,893

Filed: May 31, 2006

Attorney Docket No. QQ1 - 0191US

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed on January 25, 2011.

The request is **NOT APPROVED**.

The Office no longer accepts address changes to a new practitioner or law firm filed with requests under 37 C.F.R. § 1.36(b). The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71, or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

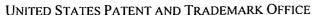
An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with \S 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.

Customer Number 55922 was indicated as the future correspondence address, however as it is not that of the first named inventor or the assignee of record, the request to withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) cannot be approved at this time. All future communications from the Office will be directed to above-listed address until otherwise properly notified by the applicant or a proper change of correspondence address have been submitted.

There is an outstanding Final Office action mailed November 2, 2010, which requires a reply from the applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6059. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Alicia Kelley Petitions Examiner Office of Petitions





Young & Thompson 209 Madison Street Suite 500 Alexandria, VA 22314

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MAR 282011

OFFICE OF PETITIONS

In re Application of Ralf Gradtke, et. al. Application No. 11/444,932 Filed: June 1, 2006

Attorney Docket No. 0503-1120-1

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR §§ 1.36(b) or 10.40 filed February 11, 2011.

It is noted that practitioner has not certified that he has (1) given reasonable notice to the client, prior to the expiration of the reply period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or duly authorized representative of the client papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond. The failure to do so may subject the practitioner to discipline. See USPTO Form No. PTO/SB/83¹.

It is further noted that practitioner has not provided a correspondence address for the intervening assignee² or first named singing inventor. Practitioner is reminded that the Office will no longer change the correspondence address to that of a new practitioner unless the Request is accompanied by a power of attorney to a new practitioner (See USPTO Form PTO/SB/82).

In view of the above, the request to withdraw is under 37 CFR §§ 1.36(b) or 10.40 **NOT APPROVED**.

¹ Petitioner should note USPTO Form Number PTO/SB/83 requires practitioner to "check each box below that is factually correct" and Warns that "If a box is left unchecked, the request will likely not be approved". (See USPTO Form No. PTO/SB/83).

² In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

The issue fee was paid on March 25, 2011. Therefore, any renewed request filed after the date the above patent issues, will made of record in the above application and no further reconsideration of this request to withdraw will be undertaken.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at

Andrea Smith Petitions Examiner Office of Petitions

cc: Liam McDowell 1061 Dalebrook Drive Alexandria, VA 22308



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MAILED

MAR 08 2011

OFFICE OF PETITIONS

In re Application of

Cohen et al.

Application No. 11/444,963

Filed: May 31, 2006

Attorney Docket No. QQ1 - 0165US

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed on January 25, 2011.

The request is **NOT APPROVED**.

The Office no longer accepts address changes to a new practitioner or law firm filed with requests under 37 C.F.R. § 1.36(b). The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71, or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with $\S 3.73(b)$ that is signed by a party who is authorized to act on behalf of the assignee.

Customer Number 55922 was indicated as the future correspondence address, however as it is not that of the first named inventor or the assignee of record, the request to withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) cannot be approved at this time. All future communications from the Office will be directed to above-listed address until otherwise properly notified by the applicant or a proper change of correspondence address have been submitted.

There is an outstanding Non final Office action mailed December 22, 2010, which requires a reply from the applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6059. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Alicia Kelley Petitions Examiner Office of Petitions

Margaret Anderson 106 E. 6th Street, Suite 900 Austin, TX 78701

MAILED APR 1 1 2011

OFFICE OF PETITIONS

In re Application of

Edward K.Y. Jung, et. al.

Application No. 11/444,973

Filed: May 31, 2006

Attorney Docket No. QQ1-0132US

DECISION ON PETITION TO WITHDRAW FROM

RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR §§ 1.36(b) or 10.40 filed January 27, 2011.

The request is **MOOT**.

A review of the file record indicates that any previous power of attorney was revoked on January 31, 2011. Accordingly, the request to withdraw under 37 CFR §§ 1.36(b) or 10.40 is unnecessary.

All future communications from the Office will be directed to the above-listed address of record until otherwise notified by applicant.

This application file is being referred to Technology Center 2600 for further processing.

elephone inquires concerning this decision should be directed to the undersigned at

(571) 272-3226.

Andrea/Smith Petitions Examiner Office of Petitions

CC:

Lee & Hayes, PLLC 601 W Riverside

Suite 1400

Spokane, WA 99201



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MARGARET ANDERSON 106 E. 6TH STREET, SUITE 900 AUSTIN TX 78701

MAILED
MAR 1 4 2011
OFFICE OF PETITIONS

In re Application of

Cohen et al.

Application No. 11/444,979

Filed: May 31, 2006

Attorney Docket No. QQ1-0192US

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 26, 2011.

The request is **NOT APPROVED**.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71, or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with $\S 3.73(b)$ that is signed by a party who is authorized to act on behalf of the assignee.

According to a review of current USPTO records petitioner has not requested the address be changed to a properly recorded assignee or the first listed inventor. The Customer Number 55922 is neither the first named inventor nor the assignee who properly became of record under 37 CFR 3.71 As such, all future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Further, the address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Currently, there is an outstanding Office action mailed February 4, 2011 that requires a reply.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Yoan Olszewski Petitions Examiner Office of Petitions

cc: LEE & HAYES, PLLC

601 W RIVERSIDE

SUITE 1400

SPOKANE, WA 99201



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

CORNING INCORPORATED SP-TI-3-1 CORNING, NY 14831

MAILED

AUG 1 1 2010

In re Application of

Michael Donavon Brady, et al.

Application No. 11/445,024

Filed: May 31, 2006

Attorney Docket No. SP05-055

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 8, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of November 25, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). A one (1) month extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is March 26, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$810, and the submission required by 37 CFR 1.114; (2) the petition fee of \$1620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1791 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MIALEEKA WILLIAMS RHODIA INC. (CN 7500) 8 CEDAR BROOK DRIVE CRANBURY NJ 08512-7500

MAILED MAY 052011 OFFICE OF PETITIONS

In re Application of Schreiner et al.

Application Number: 11/445,115

Filing Date: 06/01/2006

Attorney Docket Number: RD

05007

DECISION GRANTING PETITION

This is a decision in reference to the petition under 37 CFR 1.183, filed on March 21, 2011, which is treated as a petition seeking waiver of 37 CFR 1.131 in that it requires that a declaration filed thereunder be signed by all inventors.

The petition is GRANTED.

Petitioners have shown that inventor Anthony Schreiner has been sent, via email, a copy of the declaration under 37 CFR 1.131. However, the inventor refused, via email and telephone conversation, to sign and return the declaration under 37 CFR 1.131 unless he was given additional compensation. A copy of the email refusal is attached, and a statement of facts by the person to whom the inventor orally refused is attached.

In view of the efforts recounted to obtained the signature of joint inventor Anthony Schreiner, it is agreed that justice would be served by waiving the requirement for his signature on the declaration filed under 37 CFR 1.131.

Receipt of the petition fee is acknowledged.

The application is referred to Technology Center Art Unit 1761 for further processing.

Telephone inquiries related to this decision should be directed to the undersigned at 571.272.3231.

Douglas I. Wood

Senior Petitions Attorney

Office of Petitions

	SPE RESPONSE	FOR CERTIFICATE OF CORRECTION					
DATE	: <u>11-1-11</u>						
TO SPE OF	: ART UNIT 1732						
SUBJECT	: Request for Certificate of Correction for Appl. No.: 11445235 Patent No.: 7776779						
CofC mailro	oom date: 10-21-11						
		ertificate of correction within 7 days					
FOR IFW	•						
IFW applic	view the requested changes cation image. No new matte of the claims be changed.	s/corrections as shown in the COCIN er should be introduced, nor should	document(s) in the the scope or				
	mplete the response (see bument code COCX.	elow) and forward the completed re-	sponse to scanning				
FOR PAP	ER FILES:						
Please rev	view the requested changes . Please complete this form	s/corrections as shown in the attachen (see below) and forward it with the	ed certificate of file to:				
Rar	tificates of Correction Bra ndolph Square 9D40-E m Location 7580	anch (CofC)					
Note: _							
			Omega Lewis				
	F V . A		<u>703-756-1575</u>				
	ou For Your Assistance	·					
•	est for issuing the above- sion on the appropriate box.	identified correction(s) is hereby:					
	△ Approved	All changes apply.					
	☐ Approved in Part	Specify below which changes do not apply.					
	□ Denied	State the reasons for denial below.					
Commen	ts:		·				
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		/Melvin Curtis Mayes/	1732				
PTOL-306 (REV. 7/	03)	SPE U.S. DEPARTMENT OF COMMERCE	Art Unit Patent and Trademark Office				
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PTOL-306 (REV. 7/03)



NEOCONIX, INC. C/O INTELLEVATE, LLC P.O. BOX 52050 MINNEAPOLIS MN 55402 MAILED

AUG 0 1 2011

OFFICE OF PETITIONS

In re Application of John D. Williams Application No. 11/445,272

Filed: June 2, 2006

Attorney Docket No. EPC-0001-CIP-US

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 31, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an RCE and an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action mailed September 14, 2010, is accepted as having been unintentionally delayed.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$555.00 extension of time fee submitted with the petition on May 31, 2011 was subsequent to the maximum extendable period for reply, this fee is unnecessary. Petitioner may request a refund of the extension fee by writing to the Office of Finance, Refund Section. A copy of this decision should accompany the request.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 3729 for appropriate action by the Examiner in the normal course of business.

/KOC/ Karen Creasy Petitions Examiner Office of Petitions

cc:

KENNETH A. SEAMAN NEOCONIX, INC. 715 N. PASTORIA AVENUE SUNNYVALE, CA 94085



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

IDEATION LAW 2750 RIVERSIDE AVENUE JACKSONVILLE FL 32205

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OFFICE OF PETITIONS

In re Application of

Babi et al.

Application No. 11/445,284

Filed: June 2, 2006

Attorney Docket No. Aurora 0009

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 21, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item (3)

With regards to item (3) the instant petition is not signed. The statement required in item (3) has not been signed by petitioner. A grantable petition pursuant to 37 CFR 1.137(b) must include the required statement signed by:

- (1) An attorney or agent of record appointed in compliance with § 1.34(b);
- (2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);

- (3) The assignee of record of the entire interest, if there is an assignee of record of the entire interest;
- (4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undividing part interest; or
- (5) All of the applicants (§§ 1.42.1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73.

Petitioner has failed to sign the petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski

Petitions Examiner

Office of Petitions



IDEATION LAW 2750 RIVERSIDE AVENUE JACKSONVILLE FL 32205

MAILED

DEC 1 0 2010

OFFICE OF PETITIONS

In re Application of

Babi et al.

Application No. 11/445,284

Filed: June 2, 2006

Attorney Docket No. Aurora 0009

DECISION ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed December 3, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, May 8, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 9, 2009. A Notice of Abandonment was mailed December 28, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of \$810.00 (previously submitted October 21, 2010), and (3) a proper statement of unintentional delay.

Further, it is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Technology Center AU 3694 for further appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski Petitions Examiner Office of Petitions

DATE	:3/24/2011	Paper No.:
TO SPE OF	: ART UNIT 2614	
SUBJECT	: Request for Certificate of Correct	ion for Appl. No.: <u>///4453/2</u> Patent No.: <u>784989/</u>
		CofC mailroom date: 3/14/201
Please resp	ond to this request for a cert	tificate of correction within 7 days.
FOR IFW FI	LES:	
the IFW app		orrections as shown in the COCIN document(s) in tter should be introduced, nor should the scope or
	plete the response (see belonent code COCX.	ow) and forward the completed response to scanning
FOR PAPER	R FILES:	
	•	orrections as shown in the attached certificate of see below) and forward it with the file to:
	olph Square – 9D10-A Location 7580	
		Virginia Tolbert Certificates of Correction Branch
Thank You	For Your Assistance	Certificates of Correction Branch
The reques		Certificates of Correction Branch
The reques	t for issuing the above-ide	Certificates of Correction Branch 571-272-0460
The reques	t for issuing the above-ide	Certificates of Correction Branch 571-272-0460 entified correction(s) is hereby:
The reques Note your decision	t for issuing the above-ide n on the appropriate box. Approved Approved in Part	Certificates of Correction Branch 571-272-0460 entified correction(s) is hereby: All changes apply.
The reques: Note your decision	t for issuing the above-ide n on the appropriate box. Approved Approved in Part	Certificates of Correction Branch 571-272-0460 Entified correction(s) is hereby: All changes apply. Specify below which changes do not apply. State the reasons for denial below.
The reques: Note your decision	t for issuing the above-ide on the appropriate box. Approved Approved in Part Denied	Certificates of Correction Branch 571-272-0460 Entified correction(s) is hereby: All changes apply. Specify below which changes do not apply. State the reasons for denial below.
The reques: Note your decision	t for issuing the above-ide on the appropriate box. Approved Approved in Part Denied	Certificates of Correction Branch 571-272-0460 Entified correction(s) is hereby: All changes apply. Specify below which changes do not apply. State the reasons for denial below.
The reques: Note your decision	t for issuing the above-ide on the appropriate box. Approved Approved in Part Denied	Certificates of Correction Branch 571-272-0460 Entified correction(s) is hereby: All changes apply. Specify below which changes do not apply. State the reasons for denial below.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No.

Casimir Jones, S.C. 2275 DEMING WAY, SUITE 310 MIDDLETON WI 53562

MAILED NOV 18 2011

OFFICE OF PETITIONS

In re Application of

Richardson et al.

Application No. 11/445,415

Patent No.: 7,439,024

Filed: June 1, 2006

Issued: October 21, 2008
Attorney Docket No.: UM-12011

Title: METHODS AND KITS FOR

DIAGNOSING OR MONITORING

AUTOIMMUNE AND CHRONIC

INFLAMMATORY DISEASES

DECISION ON PETITION

PURSUANT TO

37 C.F.R. § 1.28(c)

This is a notice regarding your request for acceptance of a fee deficiency submission pursuant to 37 C.F.R. § 1.28, received on September 23, 2011. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 C.F.R. § 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 C.F.R. § 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this notice is intended to imply that an investigation was done.

Petitioner has identified the particular type of fees that were erroneously paid as a small entity, when the small entity fees were actually paid, the small entity fees that were actually paid, the deficiency owed amounts, and the total deficiency payment owed.

The deficiency payment in the amount of \$2385.00 has been received.

Decision on Petition pursuant to 37 C.F.R. § 1.28(c)

Your fee deficiency submission pursuant to 37 C.F.R. § 1.28(c) is hereby accepted. The petition is **GRANTED** accordingly.

Page 2

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.

Paul Shanoski

Senior Attorney

Office of Petitions

DORITY & MANNING, P.A. POST OFFICE BOX 1449 **GREENVILLE SC 29602-1449**

In re Application of

SCHNABEL, GUIDO et al.

Application No.: 11/445,450

Filing or 371(c) Date: June 1, 2006

Attorney Docket Number: CXUF-464

AUG 19 2010

DECISION ON

PETITION

This is a decision on the Petition to Withdraw Holding of Abandonment received in the United States Patent and Trademark Office (USPTO) on June 22, 2010.

This petition is **GRANTED**.

The application was inadvertently abandoned for failure to timely submit the Issue Fee and Publication fee as required by the Notice of Allowance, mailed February 23, 2010 which set forth a three (3) month statutory period of reply. The Notice of Abandonment was mailed on June 16, 2010.

Petitioner states that the issue fee transmittal and payment were timely filed via the USPTO on May 14, 2010. Petitioner submitted a copy of the original submission which included a properly completed Certificate of Mailing/Transmission.

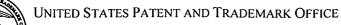
In view of the foregoing, the holding of abandonment for failure to timely pay the issue fee is hereby withdrawn and the application restored to pending status.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 756-

1547.

Kav Ø. Pinkney

Application Assistance Unit Office of Data Management





Margaret Anderson 106 E. 6th Street, Suite 900 Austin, TX 78701

MAILED

APR 1 1 2011

OFFICE OF PETITIONS

In re Application of

Alexander J. Cohen, et. al.

Application No. 11/445,485

Filed: May 31, 2006

Attorney Docket No. QQ1-0129US

DECISION ON PETITION TO WITHDRAW FROM

RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR §§ 1.36(b) or 10.40 filed January 27, 2011.

The request is **MOOT**.

A review of the file record indicates that any previous power of attorney was revoked on January 31, 2011. Accordingly, the request to withdraw under 37 CFR §§ 1.36(b) or 10.40 is unnecessary.

All future communications from the Office will be directed to the above-listed address of record until otherwise notified by applicant.

There is an outstanding Office action mailed December 6, 2010, that requires a reply from the applicant. Therefore, this application file is being referred to Technology Center 3600 to await a response.

Telephone inquires concerning this decision should be directed to the undersigned at

(571) 272_~3226.

Andrea/\$mith
Petitions Examiner
Office of Petitions

cc: Lee & Hayes, PLLC

601 W Riverside

Suite 1400

Spokane, WA 99201



F. CHAU & ASSOCIATES, LLC 130 WOODBURY ROAD WOODBURY NY 11797

MAILED

AUG 27 2010

OFFICE OF PETITIONS

In re Application of Son, et al.

Application No. 11/445,805

Filed: June 3, 2006

Attny Docket No. 8836-337

(IB14517-US)

ON APPLICATION FOR

PATENT TERM ADJUSTMENT

This is in response to the STATEMENT OF FACTS IN SUPPORT OF APPLICATION FOR PATENT TERM ADJUSTMENT, filed June 30, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent is six hundred sixty-nine (669) days, not six hundred twenty-four (624) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. The request will be treated as a petition under 37 CFR \$1.705(b).

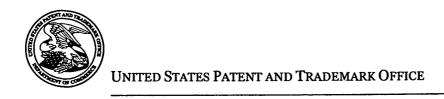
The request for reconsideration of patent term adjustment is $\frac{\text{DISMISSED}}{\text{S200.00}}$ because the petition was not accompanied by the \$200.00 fee set forth in 37 CFR 1.18(e). A review of the application file reveals that the Director of the USPTO has not been authorized to charge any additional fees required under 37 CFR 1.18. The merits of the petition will not be addressed until the \$200.00 fee set forth in 37 CFR 1.18(e) is submitted.

Applicants are given THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer, from the mail date of this decision to respond to this decision. No extensions of time will be granted under § 1.136.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley Senior Petitions Attorney

Office of Petitions



NIXON PEABODY LLP 300 S. Riverside Plaza 16th Floor CHICAGO IL 60606

MAILED

JUL 12 2011

OFFICE OF PETITIONS

In re Application of

Engleman et al.

Patent Number: 7,833,094 : DECISION ON REQUEST
Issue Date: 11/16/2010 : FOR RECONSIDERATION OF
Application No. 11/445982 : PATENT TERM ADJUSTMENT

Filing or 371(c) Date: 06/01/2006

Attorney Docket Number: 247079-000419USPT

This is a decision on the petition filed on January 18, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by seven hundred fifty-seven (757) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by seven hundred fifty-seven (757) days is **GRANTED TO THE EXTENT INDICATED**.

Patentee's calculation fails to take into account that a notice of appeal was filed on November 3, 2009. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See, 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period is 161 days, beginning on November 3, 2009, and ending on April 12, 2010, the date of mailing of the non-final Office action. Thus, B delay is 371 (532 – 161) days. (The 373 days accorded at issuance was for B delay. The 373 days is being removed and corrected to 371 days). As such, the patent term adjustment is being decreased to 596 days.

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **five hundred ninety-six (596)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

: 7,833,094 B2

DATED

: November 16, 2010

INVENTOR(S): Engleman et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [*] Notice: under 35 USC 154(b) by 598 days.

Delete the phrase "by 598 days" and insert - by 596 days--



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/446,005	06/01/2006	Joseph Raleigh Duke JR.	B00-126A	9336
26683 THE GATES (7590 10/18/2010 CORPORATION	EXAMINER		
IP LAW DEPT	7. 10-A3	REESE, ROBERT T		
1551 WEWATTA STREET DENVER, CO 80202			ART UNIT	PAPER NUMBER
22,00			3654	
			MAIL DATE	DELIVERY MODE
			10/18/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

OCT 18 2010

The Gates Corporation IP Law Dept. 10-A3 1551 Wewatta St. Denver, CO 80202

In re Application of:

Duke, Jr. et al.

Application No. 11/446,005

Filed: June 1, 2006

For F

POWER TRANSMISSION BELT

AND A PROCESS FOR ITS

MANUFACTURE

DECISION ON PETITION REGARDING REQUEST TO

WITHDRAW FINALITY UNDER 37 CFR 1.181

This is in response to the petition filed on July 01, 2009 under 37 CFR 1.181 requesting the withdrawal of the finality of the Office action mailed April 01, 2009 as being premature.

The petition is **DISMISSED**.

Applicant alleges that (a) the Final rejection mailed April 01, 2009, even though it was identical to the previous non-final rejection (since the claims were not amended), was premature in accordance with the guidelines of MPEP 706 in that it relied on a claim term construction which had no basis in the first (non-final) rejection, no reasonable basis in the specification, and no supporting extrinsic evidence therefore amounting effectively to a new ground of rejection, (b) that the examiner's construction of the claim term "cluster" is contrary to the applicant's lexicography in the specification and contrary to extrinsic evidence, (c) that the Final rejection introduced for the first time in the record an arbitrary definition of the claim term "cluster" and, therefore, applicant had not been afforded a chance to appropriately respond, and (d) by not making explicit in the first (non-final) rejection a claim construction relied on for rejection, the applicant simply has not been afforded a chance to respond to the examiner's reasoning with appropriate amendment or argument.

A review of the record reveals that the issues in question centers on the definition of the term "cluster" in claims 1, 12, and 13. In the non-final rejection, the examiner did not explicitly state the definition of "cluster" that he used in rejecting the claims. In the final rejection, in response to applicant's arguments, the examiner stated in the Response to Arguments that "A cluster is construed to be a collection of two or more items included in a specified area. This area has been identified as the fabric element. Gibson et al

describes this volume as the portion of the fabric cover that is penetrated by the composite coating (see paragraph 26). The friction modifying constituent is described as being dispersed throughout a matrix (see paragraph 31). As such, there would be a collection of friction modifying particles included in a specific area, meeting the construed definition of a cluster."

According to Merriam-Webster OnLine Dictionary, 11th Edition, "cluster" is defined as "a number of similar things that occur together". According to Webster's New World College Dictionary, 4th Edition, "cluster" is defined as "1. a number of things of the same sort gathered together or growing together; bunch". According to Compact Oxford English Dictionary, "cluster" is defined as "a group of similar things or people positioned or occurring closely together". These are consistent with the dictionary definition given by applicant (see page 6 of Petition).

In paragraph [0026] of the reference Gibson et al (US 2002/0179228), the friction modifying element ("internal lubricating agent") 20 is applied to the fabric element 22 so that it "penetrates at least a substantial portion of the total thickness" of the fabric element 22 or "penetrates less than the entire thickness of the fabric layer 22". As shown in Fig.1, fabric element 22 and friction modifying element 20 are on one side of belt 10. Since the friction modifying element ("internal lubricating agent") 20 is within at least a portion of the total thickness of fabric element 22, it is deemed reasonable to interpret that element 20 ("internal lubricating agent") is "in the form of at least one cluster within said fabric element", as compared with the portion of fabric element 22 not penetrated by the internal lubricating agent 20 or with the rest of the belt 10 including the portion of fabric element not penetrated by the internal lubricating agent 20. In other words, the internal lubricating agent 20 is clustered in the penetrated portion of the fabric element 22 and only in the penetrated portion. This is consistent with all three dictionary definitions above. It should also be noted that no density of the cluster is claimed.

Regarding issue (a): Since the examiner's interpretation of the word "cluster", which was a direct response to applicant's remarks, is consistent with the plain meaning of the word according the definitions above (MPEP 2111), and the identical rejection as in the non-final rejection is repeated in the final rejection, and since applicant did not persuasively point out how or where the final rejection is different from the non-final rejection, applicant's arguments that the final rejection constitutes a new ground of rejection are not persuasive.

Regarding issue (b): The examiner's interpretation of the word "cluster" in the final rejection is consistent with the plain dictionary definitions above (MPEP 2111). Furthermore, applicant's specification's definition of "cluster" (page 9, lines 20-23) is consistent with all three dictionary definitions above, with the examiner's interpretation, and with the teaching of Gibson et al in terms of "lubricant-rich domain" with respect to the portion of the fabric element penetrated by the internal lubricating agent. It should be noted that the examiner construed "cluster" as "a collection of two or more items...".

not just "two items" as alleged by applicant. It should again be noted that no density of the cluster is claimed. Therefore, applicant's arguments are not persuasive.

Regarding issue (c): The examiner's stated interpretation of the word "cluster" in the final rejection was a direct response to applicant's remarks. As noted above, this interpretation is consistent with the plain meaning of the word and, therefore, is not an "arbitrary definition" as alleged by applicant. Applicant has otherwise not persuasively shown why the examiner's definition is "arbitrary".

Regarding issue (d): As noted above, the examiner's interpretation of the word "cluster" is consistent with the plain meaning of the word according to the above dictionary definitions and applicant's dictionary definition, therefore, there is no requirement to make the plain meaning of a word explicit (MPEP 2111).

For the foregoing reasons, the finality of the final office action is proper. The application will be return to the Board of Appeals and Interferences awaiting a decision on the appeal.

Telephone inquiries should be directed to John Q. Nguyen, Quality Assurance Specialist, at (571) 272-6952.

Katherine Matecki/Director

Patent Technology Center 3600

(571) 272-5250

KM/jn ア



www.uspto.gov

MAILED MAR 2 1 2012

OFFICE OF PETITIONS

RENNER OTTO BOISSELLE & SKLAR, LLP 1621 EUCLID AVENUE NINETEENTH FLOOR CLEVELAND OH 44115

In re Application of

Christian Volf OLGAARD

Application No. 11/446,021

Filed: June 01, 2006

Patent No. 7,297,651 Issue Date: November 20, 2007

Attorney Docket No. BLASP5076US

: NOTICE UNDER 37 CFR. 1.28(c)

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to Michelle R. Eason at (571) 272-4231.

Thurman K. Page Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Patent No. : 7,862,945 B2 Ser. No. : 11/446,163 Inventor(s) : Saito et al. Issued : Jan. 4, 2011

: FUEL CELL SYSTEM Title

Docket No. : 128266

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based solely on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing incorrect or erroneous assignment data, before issuance of a Certificate of Correction, under 37 CFR 1.323 (see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481). This procedure is required at any time after the issue fee is paid, including after issuance of the patent.

In view of the foregoing, your request, in this matter, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

- A. the processing fee set forth in 37 CFR 1. 17(i) (currently \$130);
- B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
- C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of the date the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail:

Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building

40l Dulany Street

Alexandria, VA 22314

By fax:

(703) 872-9306

ATTN: Office of Petitions

If a fee (currently \$100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Ennis Young

For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) 272-3435 or (703) 756-1814



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA VA 22320-4850

MAILED

MAR 1 4 2012

OFFICE OF PETITIONS

In re Patent No. 7,862,945

Issue Date: 01/04/2011

Application Number: 11/446163

Filing or 371(c) Date: 06/05/2006

Attorney Docket Number: 128266

ON PETITION

This is a decision on the request under 37 CFR 3.81(b), ¹ filed on February 3, 2011, to correct the assignee data on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Receipt of the petition fee of \$130.00 and certificate of correction fee of \$100.00 is acknowledged.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3231. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Douglas I. Wood Senior Petitions Attorney

Office of Petitions

¹ See MPEP 1309, subsection II; and Official Gazette of June 22, 2004.





Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

NIXON & VANDERHYE, P.C. 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON VA 22203

MAILED

OCT 2 7 2010

OFFICE OF PETITIONS

In re Application of

Akio Ikedo, et al.

Application No. 11/446,187

Filed: June 5, 2006

Attorney Docket No. 723-1918

DECISION GRANTING PETITION

UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, October 26, 2010 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on September 27, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. \(^1\)

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 3714 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Date

: Jue 1, 2011

Patent No.

:7942745

Inventor(s)

:Ikeda et al.

Issued

:May 17, 2011

Title

:GAME OPERATING DEVICE

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rules 1.322 and 1.323.

Respecting the alleged error regarding the omission of inventors' names, the inventors are printed in accordance with the Declaration submitted at the time of filing the application. Therefore, no correction is in order here under Rules 1.322 or 1.323.

In view of the foregoing applicant's request in this matter is hereby denied, however a certificate of correction will issue to correct the remaining errors noted in the request.

Applicant's attention is directed to C.F.R. 1.324, wherein a request is being made to add or delete inventor(s), after issuance of the patent. Any inquiry concerning this communication should be directed to the Ms. A. Green at 571.272.9005 of the certificate of corrections branch.

Mary Diggs, Supervisor Decisions & Certificates of Correction Branch (703) 756-1580 or (571) 272-

Mark E. Nusbaum Nixon & Vanderhye P.C. 901 North Glebe Road, 11th floor Arlington, VA 22203

/arg





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

NIXON & VANDERHYE, P.C. 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON VA 22203

MAILED

OCT 27 2010

OFFICE OF PETITIONS

In re Application of Akio Ikedo, et al.

Application No. 11/446,188

Filed: June 5, 2006

Attorney Docket No. 723-1919

DECISION GRANTING PETITION

UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, October 26, 2010 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on September 27, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.¹

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 3714 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314

MAILED

NOV 04 2011

OFFICE OF PETITIONS

In re Application of

Marie-Emmannuelle Le Guern, et al.

Application No. 11/446,256

Filed: June 5, 2006

Attorney Docket No. P08944US00/BAS

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-1642.

/AMW/ April M. Wise Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA VA 22314

MAILED

JUN 01 2011

In re Application of

Laure Thiebaut et al.

Application No. 11/446,297

Filed: June 5, 2006

Attorney Docket No. 274121US26

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 27, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to properly reply in a timely manner to the final Office action mailed, July 9, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 10, 2010. A Notice of Abandonment was mailed on February 17, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a RCE (Request for Continued Examination, with the required fee of \$810, (2) the petition fee of \$1,620, and (3) a proper statement of unintentional delay. Accordingly, the RCE is accepted as being unintentionally delayed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1,110 extension of time fee submitted with the petition on April 27, 2011 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 3771 for appropriate action by the Examiner in the normal course of business on the reply received April 27, 2011.

/Kimberly Inabinet/

Kimberly Inabinet Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

ROBERT E. BUSHNELL & LAW FIRM 2029 K STREET NW SUITE 600 WASHINGTON, DC 20006-1004

MAILED

AUG 1 3 2010

OFFICE OF PETITIONS

In re Application of Eui Jeong Hwang Application No. 11/446,377 Filed: June 5, 2006 Attorney Docket No. P57820

ON PETITION

This is a decision on the petition, filed August 12, 2010 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 12, 2010 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2889 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/ Irvin Dingle Petitions Examiner Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).



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Alexandria, VA 22313-1450 www.uspto.gov

DLA PIPER LLP (US) 4365 EXECUTIVE DRIVE **SUITE 1100 SAN DIEGO CA 92121-2133**

MAILED MAR 0 9 2012 OFFICE OF PETITIONS

In re Application of

TURNELL, et al

Application No. 11/446,405

Filed: June 2, 2006

Attorney Docket No. MEDIV2070-2

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 14, 2012.

The request is **NOT APPROVED.**

The Office will either change the correspondence address of record to the most current address information provided for a new practitioner or law firm who has filed a proper power of attorney, the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor.

Accordingly, since the change of correspondence address appears to be that of a new practitioner or law firm who has not filed a proper power of attorney in the Office, the Request to Withdraw filed February 14, 2012, cannot be approved.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane Goodwyn/ Diane Goodwyn **Petitions Examiner** Office of Petitions

WILLIAM G. TURNELL ET AL. C/O MARK EKSE, HAGEN WILKA cc:

& ARCHER LLP

600 S MAIN AVENUE, SUITE 102

SIOUX FALLS SD 57104

Doc Code: PET.PTA.RCAL

Document Description: Request for Recalculation in view of Wyeth

Approved for use through 02/28/2011. OMB 0651-0020

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT
IN VIEW OF WYETH*

Attorney Docket Number: 60130-2698 PUS1	Patent Number: 7669866
Filing Date (or 371(b) or (f) Date): 06/02/2006	Issue Date: 03/02/2010
First Named Inventor: Martin Peaker	
Title: SUSPENSION TRAILING ARM	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature /Karin H. Butchko/	_{Date} 8-26-10			
Name (Print/Typed) Karin H. Butchko	Registration Number 45864			
Note: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*.				
*Total of forms are submitted.				

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 09/14/2010

CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009

Applicant : Martin Peaker : DECISION ON REQUEST FOR

Patent Number : 7669866 : RECALCULATION of PATENT Issue Date : 03/02/2010 : TERM ADJUSTMENT IN VIEW

Application No: 11/446,455 : OF WYETH

Filed : 06/02/2006

The Patentee's Request for Recalculation is DISMISSED.

This Request is deemed ineligible for consideration for one or more of the following reasons:

- (A). The patent for which PTA recalculation is requested is either a design or reissue application or is a reexamination proceeding;
- (B). The patent for which PTA recalculation is requested resulted from a utility or plant application filed under 35 USC 111(a) before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;
- (C). The patent for which PTA recalculation is requested resulted from an international application in which the international filing date was before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;
- (D). The patent for which PTA recalculation is requested issued on/after March 2, 2010;
- (E). The Request for Recalculation was filed more than 180 days after the grant date of the patent and the request was not filed within two months of a dismissal of a request for reconsideration of the of the patent term under 37 CFR 1.705(d);
- not solely limited to USPTO pre-Wyeth The Request for Recalculation is interpretation of 35 U.S.C. 154(b)(2)(A);

(G). A civil action was filed pursuant to 35 U.S.C. 154(b)(4)(A)concerning the same patent at issue in this request.

Patentee may file a reply to this decision dismissing the Request for Recalculation. Patentee must file such reply within one month or thirty days, whichever is longer, of the mail date of the decision dismissing the Request for Recalculation. No fee is required if patentee is asserting in the reply that the dismissal for ineligibility is improper.

Patentee should use document code PET.OP if electronically filing a reply to this dismissal. If the USPTO finds that the request was improperly deemed ineligible, the USPTO will mail applicant a recalculation determination.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A). Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154 (b) (4) (A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702,



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No.

WIGGIN AND DANA LLP

ATTENTION: PATENT DOCKETING

ONE CENTURY TOWER, P.O. BOX 1832

NEW HAVEN CT 06508-1832

MAILED

SEP 29 2011

OFFICE OF PETITIONS

In re Application of

Edoga et al.

Application No. 11/446,482

DECISION ON PETITION

Filed: June 2, 2006 PURSUANT TO

Attorney Docket No.: 37 C.F.R. § 1.137(B)

103056A-500

Title: ENDOVASCULAR STAPLER

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed August 9, 2011, to revive the above-identified application.

This petition pursuant to 37 C.F.R. § 1.137(b) is GRANTED.

The above-identified application became abandoned for failure to file a proper response to the Restriction Requirement, mailed January 19, 2010, which set a shortened statutory period to reply of one month. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on February 20, 2010. A notice of abandonment was mailed on December 8, 2010.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition

pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was. unintentional, and;

(4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this petition, Petitioner has submitted, inter alia, the petition fee, an election of species, and the proper statement of unintentional delay.

As such, the first three requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the election of species that was received on August 9, 2011 can be processed in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - the Office of Petitions cannot effectuate a change of status.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski Senior Attorney Office of Petitions

¹ See Rule 1.137(d).

² Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/446,604	06/01/2006	Makoto Saito	6057-46209	8953
35690 MEVERTONS	7590 12/07/2011 S HOOD KIVI IN KOWI	FRT & COFTZEL P C	EXAM	IINER
MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. P.O. BOX 398 AUSTIN, TX 78767-0398		SONG, HOSUK		
			ART UNIT	PAPER NUMBER
	•	,	2435	
		1	NOTIFICATION DATE	DELIVERY MODE
			12/07/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent_docketing@intprop.com ptomhkkg@gmail.com



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
WASHINGTON, DC 20231

MAKATO SAITO 2201-1-417, Omae Tsumagoi-mura, Gumma 377-1612 Japan

In re Reissue Patent of: Saito

Patent No. RE42,163 Filed: June 5, 2006

For: Data Management System

DECISION ON PETITION UNDER 37 CFR 1.181(a)(3) TO INVOKE SUPERVISORY AUTHORITY OF THE DIRECTOR

This is a decision on the petition under 37 CFR 1.181(a)(3) filed on February 17, 2011 asking to allow the petitioner to make its position in above identified reissue in accordance with the true inventorship including that in US Patent5805706 in the above-identified patent.

The petition is **Denied**.

Relevant File Record History

The petitioner has filed a petition under 37 CFR 1.181(a)(3) filed on, asking to obtain the invention in Patent No. RE42,163 (hereafter referred to as '163 patent).

10/974956 is a reissue of 08633581, filed 04/17/1996, now U.S. Patent 5'805'706 (hereafter referred to as '706 patent).

The '706 patent was involved in interference number 105229, suggested by the petitioner. The petitioner was named the senior party in the interference.

On March 1, 2005, the Board of Patent Appeals and Interferences (BPAI) entered a judgment against the senior party (the petitioner) in application 09/097877.

REVIEW OF FACTS

The petitioner is asking to obtain the invention in the '706 patent. As the petitioner lost the interference on March 1, 2005 and as this petition was filed 6 years from the decision,

Decision on Petition

petitioner has failed to meet either the period for response to that decision for reconsideration or the timeliness requirements of petitioning any petitionable issues in the decision. Accordingly, this matter is considered closed and finally determined.

DECISION

For the above-stated reasons, the petition is **denied**.

Tod R Swann, WQAS 2430

Technology Center 2400

Networking, Multiplex, Cable and Information Security

United States Patent and Trademark Office



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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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HANLEY, FLIGHT & ZIMMERMAN, LLC 150 S. WACKER DRIVE SUITE 2100 CHICAGO, IL 60606

MAILED
AUG 1 6 2010
OFFICE OF PETITIONS

In re Application of

Jason Dondlinger, et al.

Application No.: 11/446,679

Filed: June 5, 2006

Attorney Docket No.: 92/D06-013A

ON PETITION

This is a decision on the petition, filed August 13, 2010, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 13, 2010, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. \(^1\)

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 3634 for further processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement (IDS).

/SDB/

Sherry D. Brinkley Petitions Examiner Office of Petitions

¹ The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s)
Transmittal Form (along with any balance due at the time of submission). <u>Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.</u>



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Haynes and Boone, LLP IP Section 2323 Victory Avenue SUITE 700 Dallas TX 75219

MAILED
AUG 2 9 2011
OFFICE OF PETITIONS

In re Application of

Guy Silver et al. Application No. 11/446,699

Filed: June 4, 2006

Attorney Docket No. M-15617-1P US

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 12, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 20, 2011. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). A three (3) months extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is July 21, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$405, and the submission required by 37 CFR 1.114; (2) the petition fee of \$810; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4584.

This application is being referred to Technology Center AU 2814 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

JoAnne Burke Petitions Examiner Office of Petitions



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.usplo.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/446,796	06/05/2006	Minoru Uchiyama	CANO-1059	2893
37013	7590 10/06/2010		EXAM	INER
ROSSI, KIMMS & McDOWELL LLP. 20609 Gordon Park Square, Suite 150		HARVEY, DAVID E		
Ashburn, VA 2			. ART UNIT	PAPER NUMBER
			2481	
				75, 115, 115, 115, 115, 115, 115, 115, 1
			NOTIFICATION DATE	DELIVERY MODE
			10/06/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail@rkmlegalgroup.com



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

ROSSI, KIMMS & McDOWELL LLP. 20609 Gordon Park Square, Suite 150 Ashburn VA 20147

In re Application of

UCHIYAMA, MINORU

Application No. 11/446,796

Filed: June 5, 2006

Attorney Docket No. CANO-1059

DECISION ON REQUEST TO

PARTICIPATE IN PATENT

PROSECUTION HIGHWAY

PROGRAM AND PETITION

TO MAKE SPECIAL UNDER

37 CFR 1.102(d)

This is a decision on the renewed request to participate in the Patent Prosecution Highway (PPH) program and the petition under 37 CFR 1.102(d), filed August 25, 2010 to make the above-identified application special.

The request and petition are GRANTED.

A grantable request to participate in the PPH program and petition to make special require:

- (1) The U.S. application must validly claim priority under 35 U.S.C. 119(a) to one or more applications filed in the JPO;
- (2) Applicant must submit a copy of the allowable/patentable claim(s) from the JPO application(s) along with an English translation thereof and a statement that the English translation is accurate:
- (3) All the claims in the U.S. application must sufficiently correspond or be amended to sufficiently correspond to the allowable/patentable claim(s) in the JPO application(s);
- (4) Examination of the U.S. application has not begun;
- (5) Applicant must submit a copy of all the office actions from each of the JPO application(s) containing the allowable/patentable claim(s) along with an English translation thereof and a statement that the English translation is accurate; and
- (6) Applicant must submit an IDS listing the documents cited by the JPO examiner in the JPO office action along with copies of documents except U.S. patents or U.S. patent application publications;

The request to participate in the PPH program and petition now comply with the above requirements. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to Doris To at 571-272-7629.

All other inquiries concerning the examination or status of the application should be directed to Patent Application Information Retrieval (PAIR) system.

The application will be forwarded to the examiner for action on the merits commensurate with this decision.

/Doris To/

Doris To Quality Assurance Specialist Technology Center 2600 Communications



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

THE MARBURY LAW GROUP, PLLC 11800 SUNRISE VALLEY DRIVE SUITE 1000 RESTON VA 20191

MAILED

AUG 0 9 2011

OFFICE OF PETITIONS

In re Application of

Lally

:

Application No. 11/446,904

Filed/Deposited: 5 June, 2006

Attorney Docket No. 1628-002

DECISION

This is a decision on the papers filed on 28 June, 2011, for revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b).

NOTE:

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue.

Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, Petitioner must make such an inquiry.

If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional, Petitioner must notify the Office.

The petition pursuant to 37 C.F.R. §1.137(b) is **GRANTED**.

¹ See 37 C.F.R. §11.18(b), formerly §10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

Application No. 11/446,904

As to the Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Applicant failed to reply timely and properly to the non-final Office action mailed on 21 March, 2008, with reply due absent extension of time on or before 21 June, 2008.

The application went abandoned by operation of law after midnight 21 June, 2008.

The Office mailed the Notice of Abandonment on 31 October, 2008.

On 28 June, 2011, Petitioner filed, *inter alia*, a petition (with fee) pursuant to 37 C.F.R. §1.137(b) to revive the application as having been abandoned due to unintentional delay, a reply in the form of an amendment and made the statement of unintentional delay.

As noted above, it is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue.

Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.² In the event that such an inquiry has not been made, Petitioner **must** make such an inquiry.

If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional, Petitioner must notify the Office.

² See 37 C.F.R. §11.18(b), formerly §10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

Moreover, the record (including the petition filed on 28 June, 2011, does not necessitate a finding that the delay between midnight 21 June, 2008 (the date of abandonment), and 28 June, 2011 (the date of the filing of grantable petition), was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on the duty of candor and good faith of Petitioner/ Counsel Edward D. Light (Reg. No. 51,948) when accepting Petitioner's representation that the delay in filing the response was unintentional.³

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP $\S711.03(c)$ as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. $\S1.137(b)$.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.⁴

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).⁵ The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

³ See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 C.F.R. §1.137(b) to the Patent and Trademark Office).

⁴ See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

⁵ 35 U.S.C. §133 provides:

³⁵ U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

Application No. 11/446,904

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and, by definition, are not intentional.⁶))

As to Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is granted.

The instant application is released to the Technology Center/AU 2456 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Therefore, by example, an <u>unintentional</u> delay in the reply might occur if the reply and transmittal form are <u>to be</u> prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

Application No. 11/446,904

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2⁷) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

⁷ The regulations at 37 C.F.R. §1.2 provide: §1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attdance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.usoto.gov

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PROCOPIO CORY HARGREAVES & SAVITCH LLP 525 B STREET SUITE 2200 SAN DIEGO, CA 92101

AUG 03 2010

OFFICE OF PETITIONS

In re Application of

Michael Pousti

Application No. 11/446,973

DECISION ON PETITION

Filed: June 6, 2006

Attorney Docket No. 116559-2400UT

This is a decision on the petition, filed July 1, 2010, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action of November 23, 2009, which set a one (1) month shortened statutory period for reply. Five month (5) extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, a reply was due on or before May 23, 2010.

Petitioner states that a timely reply was file May 24, 2010 (May 23, 2010 fell on a Sunday), which includes the Response to Restriction Requirement. Office records show the Response to Restriction Requirement was filed May 24, 2010.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of November 23, 2009 is hereby withdrawn and the application restored to pending status.

This application is being referred to Technology Center AU 3621 for appropriate action in the normal course of business on the reply received May 24, 2010.

Irvin Dingle
Petition Examiner
Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

August 4, 2010

Patent No. Appl. No.

: 7,728,954 B2 : 11/447,289

Inventor(s)

: Johannes Jacobus Matheus Baselmans, et al.

Issued

: June 1, 2010

Title

: REFLECTIVE LOOP SYSTEM PRODUCING INCOHERENT

RADIATION

Docket No. : 1857.4510000

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule 1.322.

Assignees' names and addresses (assignment data) printed in a patent, are based solely on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing incorrect or erroneous assignment data, before issuance of a Certificate of Correction, under 37 CFR 1.323 (see Manual of Patent Examining Procedures (M.P.E.P) Chp. 1400, sect. 1481). This procedure is required at any time after the issue fee is paid, including after issuance of the patent.

In view of the foregoing, your request, in this mater, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

- A. the processing fee set forth in 37 CFR 1.117(h) (currently \$130);
- B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
- C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of the date the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail:

Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

If a fee (currently \$100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, , no additional fee is required.

Antonio Johnson

For Mary F. Diggs Decisions & Certificates of Correction Branch (571)272-0483

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVENUE, N.W. WASHINGTON DC 20005





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Bartels Law Group P.O. Box 1999 Burlingame, CA 94011-1999

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JAN 19 2011

OFFICE OF PETITIONS

In re Application of

Clement Edwin Hartman, et. al. Application No. 11/447,318

Filed: June 6, 2006

Attorney Docket No. 042824-001100

DECISION GRANTING PETITION

This is a decision on the petition filed October 21, 2010, requesting withdrawal of the holding of abandonment in the above-identified application.

This application was held abandoned for failure to timely respond to the final Office action mailed February 18, 2010. A Notice of Abandonment was mailed on September 1, 2010.

Petitioner states that the response was timely filed by Certificate of Mailing under 1.8 on August 18, 2010 and that the documents.

A review of the record shows that on August 23, 2010, the Office received a Request for Continued Examination (RCE), an Extension of Time along with \$555 for a three months extension of time, an amendment, a "Second Declaration under 37 C.F.R. 1.132," and a separate sheet of paper containing a Certificate of Mailing addressed to Mail Stop RCE, which does not itemize the items being submitted to the Office. However, since the RCE filed on August 23, 2010, contains a Certificate of Mailing under 37 CFR 1.8 dated for August 18, 2010, and shows that an Amendment/Reply, an Affidavit(s)/Declaration(s) and \$405 check were enclosed, the evidence is convincing that the documents were timely received by the Office within the extendable period for reply¹.

In view of the above, the petition is **granted** and the holding of abandonment is hereby withdrawn and the application restored to pending status.

This application file is being referred to Technology Center Art Unit 3715 for review of the response filed on August 23, 2010.

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3226.

Kndrea/Smith

Petitions Examiner
Office of Petitions

¹ The record also shows that the Office received \$555 for a three months extension of time on August 23, 2010.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

CANON U.S.A. INC. INTELLECTUAL PROPERTY DIVISION 15975 ALTON PARKWAY IRVINE, CA 92618-3731

MAILED

OCT 01 2010

In re Application of

OFFICE OF PETITIONS

Tsuruoka et al.

Application No. 11/447,395

DECISION ON PETITION

Filed: June 6, 2006

Attorney Docket No. 10010942US01

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 3, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely submit corrected drawings on or before July 7, 2010, as required by the Notice of Allowability, mailed April 7, 2010. Accordingly, the application became abandoned of July 8, 2010. A Notice of Abandonment was mailed July 27, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of replacement drawings, (2) the petition fee of \$1,620, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

This application is being referred to the Office of Data Management for processing into a patent.

Alicia Kelley

Petitions Examiner

Office of Petitions



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/447,463	06/06/2006	Francisco J. Cunha	0001331-US (05-838)	4011
52237 RACHMAN &	7590 10/08/2010 FIAPOINTE P.C. (P&W.	Λ	EXAM	INER
BACHMAN & LAPOINTE, P.C. (P&W) 900 CHAPEL STREET		VERDIER, CHRISTOPHER M		
SUITE 1201 NEW HAVEN	I, CT 06510-2802		ART UNIT	PAPER NUMBER
			3745	
			MAIL DATE	DELIVERY MODE
			10/08/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



United States Patent and Trademark Office

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

DECISION ON PETITION

BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN CT 06510-2802

In re Application of:

CUNHA, FRANCISCO J.

Appl. No.: 11/447,463

Filed: June 6, 2006

Attorney Docket Number: 0001331-US (05-838)

MICROCIRCUIT COOLING FOR BLADES

This is a decision on the petition filed on Sep. 22, 2010 by which petitioner requests consideration of the Reply Brief filed on August 17, 2010. The petition is being considered pursuant to 37 CFR 1.181 and no fee therefore is required.

The petition is dismissed.

The Request for Reconsideration of Non-Consideration of Reply Brief and Provisional Petition to the Director filed on September 22, 2010 has been treated as a petition to review an examiner's Office action. This application comes before the Technology Center Director for review of prosecution, in particular for review of the office letter of August 23, 2010. Petitioner opines that the examiner's refusal to consider the Reply Brief filed on August 17, 2010 was improper because the Reply Brief does not include any non-admitted evidence. The Reply Brief only refers the non-admitted evidence as submitted in the non-compliant Appeal Brief of February 1, 2010.

Relevant Facts

Review of the record shows on February 1, 2010, the applicant filed an Appeal Brief in the above noted file. On March 1, 2010 the examiner promulgated a Notification of Non-Compliant Appeal Brief. In the Notification of Non-Compliant Appeal Brief, the examiner explained that the Appeal Brief of February 1, 2010 contains non-admitted evidence as listed on Appendix C and on page 8 of the non-complaint Appeal Brief. To overcome the objection of the noncompliance notification, on April 1, 2010 the appellant filed a corrected Appeal Brief by deleting the non-admitted evidence from the Appeal Brief. Subsequently, in response to the Examiner's Answer, the appellant submitted a Reply Brief on August 17, 2010. In the Reply Brief of August 17, 2010, the appellant again made references to the non-admitted evidence as original filed in the non-compliant Appeal Brief of February 1, 2010. On August 23, 2010, the examiner mailed a letter informing the appellant that the Reply Brief will not be considered because it does not

Best Available Copy

comply with 37 CFR § 41.41(a). In particular, on page 4, lines 1-15 of the Reply Brief, the appellant refers to articles attached to the original non-complaint Appeal Brief of February 1, 2010, listed in the appendix of the original Appeal Brief. As set forth in the Notice of Defective Appeal Brief mailed March 1, 2010, the examiner noted that Appellant's reference to the non-admitted evidence as in Appendix C and on page 8, for example, of the original Appeal Brief, is not permitted, citing MPEP §1205.02, §1206, and 37 CFR § 41.37(c)(2). Therefore, the Reply Brief filed August 17, 2010 refers to non-admitted evidence, which is not proper under 37 CFR § 41.41(a)¹.

Discussion and Analysis

On page 8 of the original Appeal Brief filed on Feb. 1, 2010, the appellant has introduced two new articles in the Appendix C, namely, "Computation and Comparison for Heat and Fluid Flow Using a Quick and Other Difference Schemes" by Mo Yang et al. After receipt of the Notification of Non-Compliant Appeal Brief of March 1, 2010, the appellant agreed such finding of non-compliant Appeal Brief and filed a corrected Appeal Brief on April 1, 2010 by deleting the Appendix C. Subsequently, the examiner issued an Examiner's Answer of June 17, 2010. There was no new ground of rejection in the Examiner Answer. A review of the Reply Brief of August 17, 2010 clearly shows on page 4, lines 1-15 the appellant again referring to the nonadmitted evidence, namely, "Computation and Comparison for Heat and Fluid Flow Using a Ouick and Other Difference Schemes". Therefore, the Reply Brief August 17, 2010 clearly is not in compliance with 37 CFR § 41.41(a). A review of the record shows that the examiner's Office action was in compliance with proper examining practice as set forth in MPEP § 1208 (II) in refusing to consider the Reply Brief submitted August 17, 2010. The examiner's refusal to consider the non-complaint Reply Brief is correct. The examiner did not abuse his discretion or act in an arbitrary or capricious manner in denying consideration of the Reply Brief for the reasons stated. Therefore there is no basis for granting the relief requested.

Conclusion

For the foregoing reasons, the relief requested by petitioner will not be granted. Specifically, the examiner's refusal to consider the Reply Brief filed on August 17, 2010 is proper. The application is being forwarded to Board of Patent Appeals and Interferences for further processing. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136 (a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at 571-272-4856.

¹ § 41.41 Reply brief. (a) (1) Appellant may file a reply brief to an examiner's answer within two months from the date of the examiner's answer. (2) A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal. (b) A reply brief that is not in compliance with paragraph (a) of this section will not be considered. Appellant will be notified if a reply brief is not in compliance with paragraph (a) of this section

The petition is <u>dismissed</u>.

Angela D. Sykes, Director Technology Center 3700





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI OH 45202

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OCT 1 2 2011

OFFICE OF PETITIONS

In re Application of TAYLOR et al.

Application No. 11/447,491

Filed: 06/06/2006

Attorney Docket No. 10034M

DECISION GRANTING PETITION

UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.78(a)(6), filed October 5, 2011, to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of prior-filed provisional Application No. 60/688,032 filed June 7, 2005.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. 119(e) and 37 CFR 1:.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in $\S 1.17(t)$; and
- a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Additionally, the present nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

All of the above requirements having been satisfied, the late claim under 35 U.S.C. 119(e) for the benefit of the prior-filed provisional application is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. 119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the benefit claim to the prior-filed provisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center AU 1628 for consideration by the examiner of the claim under 35 U.S.C. 119(e) for the benefit of the prior-filed provisional application.

C. J. Donnell

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions

ATTACHMENT: Corrected Filing Receipt



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE UNITED STATES DEPARTMENT OF COMMIT United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

NUMBER 11/447,491

FILING or 371(c) DATE 06/06/2006 GRP ART UNIT 1628

FIL FEE REC'D 1402

ATTY.DOCKET.NO 10034M

TOT CLAIM IND CLAIMS

27

CONFIRMATION NO. 2854

CORRECTED FILING RECEIPT

27752

THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202

Date Mailed: 10/12/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections

Applicant(s)

Rebecca Ann Taylor, Cincinnati, OH; Karl Shiqing Wei, Mason, OH; Jimmie Lee Ward, Middletown, OH: Robert Richard Dykstra, West Chester, OH; Julie Anne Mathews, Okeana, OH; Lois Sara Gallon, Cincinnati, OH; Zerlina Guzdar Dubois, Mason, OH; Virginia Tzung-Hwei Hutchins, Cincinnati, OH; Jianjun Justin Li, West Chester, OH;

Assignment For Published Patent Application

The Procter & Gamble Company

Power of Attorney: The patent practitioners associated with Customer Number 27752

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/688,032 06/07/2005

Foreign Applications (You may be eligible to benefit from the Patent Prosecution Highway program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 06/30/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US 11/447,491

Projected Publication Date: Not Applicable

Non-Publication Request: No

page 1 of 3

Early Publication Request: No Title

Multi-phased personal care composition comprising a blooming perfume composition

Preliminary Class

424

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where

the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

SILVERSKY GROUP LLC 5422 LONGLEY LANE, SUITE B RENO NV 89511

MAILED

NOV 08 2010

OFFICE OF PETITIONS

In re Application of

Fuller, Milton E.

Application No. 11/447,537

Filed: June 5, 2006

Attorney Docket No. 300004-00004

ON PETITION

This is a decision on the petition under the unavoidable provisions of 37 CFR 1.137(a), filed June 4, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

Any further petition to revive must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C.§ 704.

This application became abandoned for failure to timely reply to the non-final Office action mailed May 19, 2009. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on August 20, 2009. A Notice of Abandonment was mailed December 17, 2009.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition lacks item (3). Petitioner states that after repeated attempts to contact the previous attorney, Mr. Jonathan Jobe, when contact was finally made in December 2009, he "made no mention of the pending Office action on the '537 application at that time. I was not aware that the application was or was about to be abandoned."

The USPTO must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and petitioner is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987); California, 921 F.Supp. 1219, 1259 (D.Del. 1995).

Specifically, petitioner's delay caused by the mistakes or omissions of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133. See Haines v. Quigg, supra; Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201

USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891). It follows that such is not unavoidable delay within the meaning of 35 USC 41(c) and 37 CFR 1.378(b). Ray, 55 F.3d 606, 609, 34 USPQ2d 1786, 1788 (Fed. Cir. 1995).

As Mr. Jobe was responsible for prosecution of the application when the reply necessary to avoid abandonment was due, a statement from him explaining why action was not timely taken to prevent the application from becoming abandoned should be submitted.

Petitioner is advised to send a letter (accompanied by a copy of this decision) to Mr. Jobe by certified or registered mail (return receipt requested) indicating that the U.S. Patent and Trademark Office (USPTO) is requesting assistance in ascertaining the cause of abandonment of the above-identified application, and that the USPTO is requesting that Mr. Jobe provide within a specified period (e.g., one month) a statement setting forth why appropriate action was not timely taken to prevent the application from becoming abandoned. Petitioner is advised that, in the event that Mr. Jobe does not provide such a statement, petitioner should submit a copy of such letter and a copy of the return receipt.

Petitioner may wish to consider filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$810.00 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

By facsimile:

(571) 273-8300

Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to Petitions Examiner Liana Walsh at (571) 272-3206.

/dab/ David Bucci **Petitions Examiner** Office of Petitions



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

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PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK NJ 08933-7003 MAILED

AUG 03 2010

OFFICE OF PETITIONS

In re Patent No. 7,666,308

Tycho M. Scholtens et al.

Issue Date: February 23, 2010

Application No. 11/447,562

Filed: June 6, 2006

Atty Docket No. VDX5059

: DECISION ON REQUEST

: FOR

: RECONSIDERATION OF

: PATENT TERM ADJUSTMENT

: and

: NOTICE OF INTENT TO ISSUE

: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on April 23, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by five hundred sixty-one (561) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by five hundred sixty-one days is **GRANTED**.

The Office acknowledges receipt of \$200.00 for the fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **five hundred sixty-one (561) days.**

Patent No. 7,666,308 Application No. 11/447,562

Page 2

Telephone inquiries specific to this matter should be directed to the undersigned, at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

: 7,666,308 B2

DATED

: Feb. 23, 2010

INVENTOR(S): Scholtens et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [*] Notice: under 35 USC 154(b) by (490) days

Delete the phrase "by 490 days" and insert – by 561 days--



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

JOHN S. PRATT, ESQ KILPATRICK TOWNSEND & STOCKTON LLP 1100 PEACHTREE STREET SUITE 2800 ATLANTA GA 30309

MAILED

FEB 1 4 2012

OFFICE OF PETITIONS

In re Patent No. 8,010,094

Issue Date: August 30, 2011

Application No. 11/447,659

Filed: June 06, 2006

Attorney Docket No. 55711/324937

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed November 03, 2011, requesting issuance of duplicate Letters Patent for the above-identified patent.

The petition is **GRANTED**.

The Office of Data Management is directed to issue duplicate Letters Patent for the eight (8) inventors indicated on petition.

As authorized, the \$400 fee for the petition under 37 CFR 1.182 for each certificate has been assessed to petitioner's deposit account.

Telephone inquiries concerning this decision may be directed to Michelle R. Eason at (571) 272-4231. Inquiries regarding the issuance of duplicate Letters Patent may be directed to Kimberly Terrell at (703) 756-1568 in the Office of Data Management.

A copy of this decision is being sent to Office of Data Management for issuance of duplicate Letters Patent.

Thurman K. Page Petitions Examiner Office of Petitions

cc:

Kimberly Terrell, Randolph Square, 9th Floor, Room D33 (Fax No. (571) 270-9958).



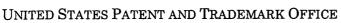
UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/447,682	06/05/2006	W. Daniel Hillis	0404-018-004A-C00001	1874
	7590 04/18/2012 ON SCIENCE FUND		EXAM	INER
CLARENCE T			TRAN, MY	CHAU T
11235 SE 6TH SUITE 200	STREET		ART UNIT	PAPER NUMBER
BELLEVUE, V	VA 98004		2629	
			MAIL DATE	DELIVERY MODE
			04/18/2012	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

THE INVENTION SCIENCE FUND CLARENCE T. TEGREENE 11235 SE 6TH STREET SUITE 200 **BELLEVUE WA 98004**

In re Application of:

W. DANIEL HILLIS ET AL

Application Serial No.: 11/447,682

Filed: June 5, 2006

For: SELF ASSEMBLY OF ELEMENTS FOR

DISPLAYS

DECISION ON PETITION TO

WITHDRAW RESTRICTION

REQUIREMENT UNDER

37 CFR 1.144

This is a decision on the petition filed March 20, 2012 under 37 CFR § 1.144 requesting withdrawal of the requirement for Election of Species issued by the examiner on May 13, 2010 and all withdrawn claims be reinstated.

BACKGROUND

- 1. On April 1, 2009, a Restriction requirement was made by the examiner. On May 6, 2009, petitioner elected claims 105-110 and 128-140 with traverse. Claims 111-127 were canceled by the petitioner without prejudice.
- 2. On June 19, 2009, an Election of Species was made by the examiner. On July 20, 2009, petitioner identified claims 105-110 and 128-140 as relating to the elected species, with traverse.
- 3. On November 25, 2009, examiner withdrew the June 19, 2009 Election of species requirement, and issued a new Election of Species requirement. On January 11, 2010, petitioner called the examiner to request a revised Election of Species requirement due to the November 25, 2009 Election of Species requirement lacks sufficient information for making an election. Agreement was reached between the petitioner and the examiner to provide a revised Election of species requirement.
- 4. On January 25, 2010, petitioner filed a written response stating that no revised Election of species requirement had been received. On the same day, January 25, 2010, the examiner withdrew the November 25, 2009 Election of species requirement, and issued a new revised Election of Species requirement.

Serial No.: 11/447,682

Decision on Petition

- 5. In response to the new revised Election of species requirement above, petitioner identified claims 105-110 and 128-140 as relating to the elected species, with traverse on February 25, 2010.
- 6. On May 13, 2010, examiner withdrew the above new revised Election of species requirement, and issued another Election of species requirement. On June 11, 2010, petitioner elected claims 105-110 and 128-140 as relating to the elected species, with traverse.
- 7. On Jaunary 6, 2011, a first Office Action was issued and made May 13, 2010 Election of Species requirement FINAL, and further, withdrew consideration of claims 107, 109-110, 128, 131-133, and 136-140 as being read on non-elected species.
- 8. On May 6, 2011, petitioner filed a response to the first Office Action traversing the finality of the January 6, 2011 Election of species requirement.
- 9. On December 21, 2011, a Final Office Action was issued to maintain the position that claims 107, 109-110, 128, 131-133, and 136-140 were drawn to non-elected species and these claims remain withdrawn from further consideration.

Subsequently, on March 20, 2012, petitioner seeks relief by filing the instant petition requesting that the requirement for Election of Species dated May 13, 2010 in the instant application be withdrawn and all withdrawn claims (claims 107, 109-110, 128, 131-133, and 136-140) be reinstated.

REGULATIONS AND PRACTICE

MPEP 803 [R-3] Restriction — When Proper

Under the statute>, the claims of< an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent (MPEP \S **>802.01, \S 806.06, and \S 808.01<) or distinct (MPEP \S 806.05 - \S *>806.05(j)<).

If the search and examination of **>all the claims in an< application can be made without serious burden, the examiner must examine *>them< on the merits, even though **>they include< claims to independent or distinct inventions.

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP § 802.01, § *>806.06<, § 808.01) or distinct as claimed (see MPEP § 806.05 - § *>806.05(j)<); and

Serial No.: 11/447,682

Decision on Petition

- 3 -

(B) There *>would< be a serious burden on the examiner if restriction is >not< required (see MPEP § 803.02, **> § 808<, and § 808.02).

809.02(a) Election > of Species < Required [R-3]

Where ** > restriction between species is appropriate (see MPEP § 808.01(a)) < the examiner should send a letter including only a restriction requirement or place a telephone requirement to restrict (the latter being encouraged). See MPEP § 812.01 for telephone practice in restriction requirements.

Action as follows should be taken:

- (A) Identify generic claims or indicate that no generic claims are present. See <u>MPEP §</u> 806.04(d) for definition of a generic claim.
- (B) Clearly identify each (or in aggravated cases at least exemplary ones) of the disclosed species, to which claims are > to be < restricted. The species are preferably identified as the species of figures 1, 2, and 3 or the species of examples I, II, and III, respectively. In the absence of distinct figures or examples to identify the several species, the mechanical means, the particular material, or other distinguishing characteristic of the species should be stated for each species identified. If the species cannot be conveniently identified, the claims may be grouped in accordance with the species to which they are restricted. > Provide reasons why the species are independent or distinct. <
- (C) Applicant should then be required to elect a single disclosed species under <u>35 U.S.C.</u> <u>121</u>, and advised as to the requisites of a complete reply and his or her rights under <u>37 CFR</u> <u>1.141</u>.

**

To be complete, a reply to a requirement made according to this section should include a proper election along with a listing of all claims readable thereon, including any claims subsequently added.

In those applications wherein a requirement for restriction is accompanied by an action on *> the elected < claims, such action will be considered to be an action on the merits and the next action *> may < be made final > where appropriate in accordance with MPEP § 706.07(a).

OPINION

A close review of the requirement for Election of Species dated May 13, 2010 and examination history revealed that in addition to the petitioner's petition statement filed on March 20, 2012, the requirement for the Election of Species dated May 13, 2010 was improper for the following reasons:

Decision on Petition

- The restriction requirement set forth on May 13, 2010 identified classes and subclasses of the claimed display elements that would require serious burden on the examiner. The identified display elements included biological elements such as nucleic acid sequences and amino acid sequences. However, those sequences identified in the Election of Species requirement were not recited in the claims 105-110 and 128-140.
- The restriction requirement set forth on May 13, 2010 did not identify the species per MPEP 809.02(a).

CONCLUSION

For the above stated reasons, the petition to withdraw the restriction requirement is **GRANTED**.

As a result of the petition decision, the Examiner's Election of Species requirement on May 13, 2010 as written is withdrawn. The examination of the instant application is reopened, and the application is being returned to the examiner for examination of claims 105-110 and 128-140 filed on June 11, 2010.

Any inquiry regarding this decision should be directed to John Peng, Quality Assurance Specialist, at (571) 272-7272.

Tariq Hafiz, Director

Technology Center 2600

Communications

-4-

Doc Code: PET.AUTO Document Description: Petition a	utomatically granted by EFS-Web	PTO/SB/83 U.S. Patent and Trademark Office Department of Commerce			
Electronic Petition Request REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS					
Application Number	11447734				
Filing Date	06-Jun-2006				
First Named Inventor	d Inventor Michael Moser				
Art Unit	1637	1637			
Examiner Name	YOUNG KIM				
Attorney Docket Number	023542-0167				
Title	Methods for detection and typing of nucleic acids				
	rney or agent for the above identified pater ssociated with Customer Number:	nt application and 61495			
The reason(s) for this request are t	hose described in 37 CFR:				
10.40(b)(4)					
Certifications					
I/We have given reasonable n intend to withdraw from emp	notice to the client, prior to the expiration of the loyment	response period, that the practitioner(s)			
I/We have delivered to the cli to which the client is entitled	ient or a duly authorized representative of the c	lient all papers and property (including funds)			
✓ I/We have notified the client	of any responses that may be due and the time	frame within which the client must respond			
Change the correspondence addrest properly made itself of record pursu	ss and direct all future correspondence to the fir I ant to 37 CFR 3.71:	st named inventor or assignee that has			
Name	ERAGEN BIOSCIENCES, INC.				
Address	Address 918 DEMING WAY, SUITE 201				
City	MADISON				
State	WI				
Postal Code	53717-1944				

I am authorized to sign on behalf of myself and all withdrawing practitioners.		
Signature	/Kassel, Mark/	
Name	Kassel, Mark	
Registration Number	38200	



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Decision Date: November 30, 2011

In re Application of : DECISION ON REQUEST TO WITHDRAW AS

Michael Moser ATTORNEY/AGENTOF RECORD

Application No: 11447734

Filed: 06-Jun-2006

Attorney Docket No: 023542-0167

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed November 30, 2011

The request is **APPROVED.**

The request was signed by Kassel, Mark (registration no. 38200) on behalf of all attorneys/agents associated with Customer Number 61495 . All attorneys/agents associated with Cusotmer Number 61495 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with correspondence address:

Name ERAGEN BIOSCIENCES, INC.

Name2

Address 1 918 DEMING WAY, SUITE 201

Address 2

City MADISON

State WI

Postal Code 53717-1944

Country US

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

LAWRENCE LIVERMORE NATIONAL SECURITY, LLC
LAWRENCE LIVERMORE NATIONAL LABORATORY
PO BOX 808, L-703
LIVERMORE, CA 94551-0808

MAILED

JUL 05 2011

OFFICE OF PETITIONS

In re Patent No. 7,504,265

Issue Date: March 17, 2009

Application No. 11/447,754

Filed: June 5, 2006

Attorney Docket No. IL-11073B

DECISION ON PETITION

This is a decision on the petition, filed, June 6, 2011, which is being treated as a request under 37 CFR 3.81(b)¹ to correct the assignee's name on the Fee(s) Transmittal form PTOL-85(b) by way of a certificate of correction in the patent.

The request is **GRANTED**.

Petitioner states that the correct assignee names are Lawrence Livermore National Security, LLC and The Regents of the University of California. Petitioner further states that the assignee names were not correctly indicated on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee. Accordingly, petitioner requests that a certificate of correction be issued to reflect the correct assignee on the front page of the Letters Patent.

The request was accompanied by a certificate of correction (and fee) as required by 3.81(b). Further, Office assignment records reflect that Lawrence Livermore National Security, LLC and The Regents of the University of California were the assignees of record before issuance of the patent. Accordingly, as the request complies with the provisions of 37 CFR 3.81(b), it is appropriate for a certificate of correction to be processed.

Inquiries concerning this decision should be directed to Alicia Kelley-Collier at (571) 272-6059. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a certificate of correction.

/Carl Friedman/ Carl Friedman Petitions Examiner Office of Petitions

¹ See MPEP 1309, subsection II; and Official Gazette of June 22, 2004.





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO IL 60661

MAILEDDEC 0 2 2010

OFFICE OF PETITIONS

In re Application of

Macinnis

Application No. 11/447,782

Filed: June 6, 2006

Atty Docket No. 16024US02

ON APPLICATION FOR

PATENT TERM ADJUSTMENT

This is in response to the "APPLICATION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 C.F.R. § 1.705)" filed November 23, 2010, which is properly treated under 37 CFR 1.705(b). Applicants submits that the patent term adjustment to be indicated on the patent is one thousand three hundred and three (1,303) days, not nine hundred and forty-one (941) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As

such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee¹.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months

For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the \$1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

after issuance pursuant to $37\ \text{CFR}\ 1.705\ \text{(d)}$ and must include payment of the required fee under $37\ \text{CFR}\ 1.18\ \text{(e)}$.

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Senior Petitions Attorney Office of Petitions Doc Code: PET.PTA.RCAL

Document Description: Request for Recalculation in view of Wyeth

Approved for use through 02/28/2011. OMB 0651-0020

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH*

Attorney Docket Patent Number: 7,663,201 8074-1164 Number: Filing Date Issue Date: 16-Feb-2010 (or 371(b) or (f) Date): 07-Jun-2006 First Named YAMADA, Yukiko Inventor:

Title: SEMICONDUCTOR DEVICE

*Total of _____

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

__ forms are submitted.

Signature /Benoit Castel/	Date August 10, 2010
Name (Print/Typed) Benoit Castel	Registration Number 35041
Note: Signatures of all the inventors or assignees of record of the entire interest or their representations of the signature. If necessary, submissee below*.	

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or

suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Instruction Sheet for: REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH*

(Not to be Submitted to the USPTO)

This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A).

This form must be filed within 180 days of the day the patent was granted, with the following exception:

Patentees who received a decision from the USPTO under the USPTO's pre-<u>Wyeth</u> interpretation of 35 U.S.C. 154(b)(2)(A) may file a request for reconsideration of that decision if such a request for reconsideration is filed within **two months** of the date of the decision (37 CFR 1.181(f)). If the patentee's sole basis for requesting reconsideration of the decision is the USPTO's pre-<u>Wyeth</u> interpretation of 35 U.S.C. 154(b)(2)(A), the request for reconsideration need only state that reconsideration is being requested in view of <u>Wyeth</u> (this form may be used for this purpose if it is filed within **two months** of the date of the decision from the USPTO).

Do not use this form if the application has been allowed, but not yet issued as a patent.

- 1. For patents issued before March 2, 2010: A request for reconsideration under 37 CFR 1.705(d) and the fee set forth in 37 CFR 1.18(e) are not required, provided that the patentee's sole basis for requesting recalculation of the PTA in the patent is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A) and this form is filed within 180 days of the day the patent was granted.
- 2. For patents issued on or after March 2, 2010 (do not use this form): Patentees seeking a revised PTA in a patent issued on or after March 2, 2010, must file a request for reconsideration under 37 CFR 1.705(d) that complies with the requirements of 37 CFR 1.705(b)(1) and (b)(2) within two months of the day the patent issued.

For more information, see "Notice Concerning Calculation of the Patent Term Adjustment With Respect to the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A)" available on the USPTO Web site at http://www.uspto.gov/patents/law/notices/2010.jsp.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
- 2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 09/02/2010

YOUNG & THOMPSON 209 Madison Street Suite 500 Alexandria, VA 22314

Applicant : Yukiko Yamada : DECISION ON REQUEST FOR Patent Number: 7663201 : RECALCULATION of PATENT : TERM ADJUSTMENT IN VIEW Issue Date : 02/16/2010

Application No: 11/447,966 : OF WYETH AND NOTICE OF INTENT TO Filed : 06/07/2006

: ISSUE CERTIFICATE OF CORRECTION

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 831 days. The USPTO will sua sponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

5

OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850

MAILED

OCT 25 2010

OFFICE OF PETITIONS

In re Application of **Tatsuhiko NOBORI**, et *al.* Application No. 11/448,072

Filed: June 7, 2006

Attorney Docket No. 127976

DECISION GRANTING PETITION

UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed October 22, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

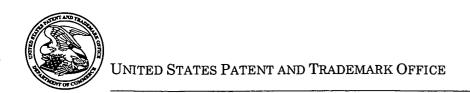
Petitioner is advised that the issue fee paid on September 22, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.¹

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 2629 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450

STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON DC 20005 MAILED

NOV 28 2011

OFFICE OF PETITIONS

In re Application of

Young Tae KIM et al. : ON PETITION

Application No. 11/448,094

Filed: June 7, 2006 :

Atty. Docket No.: 1911.1030

This is a decision on the petition filed November 11, 2011, which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to reply in a timely manner to the final Office action mailed April 12, 2011 (Office action), which set a shortened statutory period for reply of three (3) months. A Notice of Abandonment was mailed October 26, 2011.

In the petition filed November 11, 2011, Petitioner asserts that the Office action was not received.

In the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not, in fact, received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

- (1) a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
- (2) Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file

jacket or the equivalent, and the application contents, indicates that the Office action was not received.

(3) A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the **master docket report** showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. See MPEP §711.03(c)(I)(A).

As the instant petition satisfies the indicated requirements, the holding of abandonment is withdrawn and the application is restored to pending status.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

The application file will be referred to the Technology Center Art Unit 2614 for consideration of the Response included with the petition.

Ramesh Krishnamurthy

Petitions Examiner

Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Paper No.

ROPES & GRAY LLP IPRM - Floor 43 Prudential Tower 800 Boylston Street Boston MA 02199-3600

MAILED
NOV 17 2010
OFFICE OF PETITIONS

In re Application of :

Chen et al. : DECISION ON APPLICATION

Application No. 11/448,171 : FOR

Filed: June 5, 2006 : PATENT TERM ADJUSTMENT

Atty Docket No. COTH-P03-003 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER §37 CFR 1.705(b)," filed May 26, 2010. Applicants request that the initial determination of patent term adjustment of zero (0) days be corrected to include additional days of applicant delay.

The application for patent term adjustment is **GRANTED to the extent indicated herein**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is zero (0) days, including an additional 278 days of applicant delay. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 26, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. The instant application for patent term adjustment was timely filed on May 26, 2010¹.

Applicants' arguments have been considered, and found persuasive to an extent. 37 CFR 1.704(c)(7) establishes submission of a

PALM records indicate that the Issue Fee was also received on May 26, 2010.

reply having an omission (37 CFR 1.135(c)) as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Submitting a reply having an omission requires the Office to issue an action under 37 CFR 1.135(c) and await and process the applicant's reply to the action under 37 CFR 1.135(c) before the initial reply (as corrected) can be treated on its merits. In addition, 37 CFR 1.704(c)(7) provides that in such a case the period of adjustment set forth in 37 CFR 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed. The reference to 37 CFR 1.135(c) is parenthetical because 37 CFR 1.704(c)(7) is not limited to Office actions under 37 CFR 1.135(c) but applies when the Office issues any action or notice indicating that a reply has an omission which must be corrected: e.g., (1) a decision on a petition under 37 CFR 1.47 dismissing the petition as lacking an item necessary to grant the petition; or (2) a notice indicating that the computer readable format sequence listing filed in reply to a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures (PTO-1661) does not comply with 37 CFR 1.821 et seq.

Applicants are correct that a period of reduction should be entered for applicant delay pursuant to 37 CFR 1.704(c)(7). Decisions on petition under 37 CFR 1.47 dismissing the petitions as lacking an item necessary to grant the petition were mailed on June 6, 2007 and November 14, 2007. These decisions reflect that the responses filed February 28, 2007 (copy submitted March 1, 2007) and October 17, 2007 were considered by the deciding Official to require correction of an omission. However, applicants contend that the response filed October 17, 2007 was fully responsive to the petition decision of June 6, 2007. argument is not persuasive. The decision of the deciding Official with respect to the omission and its correction is controlling. Thus, the period of reduction is calculated based on the omission being corrected on December 3, 2007. Accordingly, a period of reduction of 278 days is properly entered for applicant delay beginning on March 1, 2007, the day after the date the first reply having an omission was filed and ending on December 3, 2007, the date a reply correcting the omission was ultimately filed.

In view thereof, the initial determination of patent term adjustment at the time of the mailing of the notice of allowance is ZERO (0) days, including an additional 278 days of applicant delay.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office of Data Management has been advised of this decision. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and if applicable, for the Office taking in excess of three years to issue the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson

Senior Petitions Attorney

Office of Petitions

Day: Thursday Date: 11/4/2010

Time: 07:17:45

* PALM INTRANET

PTA Calculations for Application: 11/448171					
Application Filing Date: 06/05/2006	PTO Delay (PTO): 312				
Issue Date of Patent:	Three Years: 0				
Pre-Issue Petitions: 0	Applicant Delay (APPL): 397				
Post-Issue Petitions: 0	Total PTA (days): 0				
PTO Delay Adjustment: -278					

File Contents History						
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97	02/26/2010	MAIL NOTICE OF ALLOWANCE				
96	02/25/2010	ISSUE REVISION COMPLETED				
95	02/25/2010	DOCUMENT VERIFICATION				
94	02/25/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED				
93		CASE DOCKETED TO EXAMINER IN GAU				
92	02/10/2010	NOTICE OF ALLOWABILITY				
91	02/04/2010	PARALEGAL TD ACCEPTED				
90		TERMINAL DISCLAIMER FILED		68	84	
87	12/01/2009	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)	·			
86	11/24/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)				
85	11/30/2009	DATE FORWARDED TO EXAMINER			,	
84	11/25/2009	AMENDMENT AFTER FINAL REJECTION				
83	09/25/2009	MAIL FINAL REJECTION (PTOL - 326)				
82	09/25/2009	FINAL REJECTION				
81	02/02/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED				
80	07/23/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED				
79	07/23/2009	REFERENCE CAPTURE ON IDS				
78	07/23/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED				
77	06/02/2009	NEW OR ADDITIONAL DRAWING FILED				
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75	06/02/2009	RESPONSE AFTER NON-FINAL ACTION		31	68	

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72	07/23/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
71	01/08/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		49	58
70	02/02/2009	FILED			
69	02/02/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
68	02/02/2009	MAIL NON-FINAL REJECTION			
67	01/30/2009	NON-FINAL REJECTION			
65	01/08/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
64	11/20/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
63	04/30/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
62	11/13/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
61	01/08/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
60	11/20/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
59	11/29/2008	DATE FORWARDED TO EXAMINER			
58	11/20/2008	RESPONSE TO ELECTION / RESTRICTION FILED		122	53
57	11/20/2008	FILED			
56	10/14/2008	MISCELLANEOUS INCOMING LETTER			
55	10/29/2008	MAIL NOTICE OF INFORMAL OR NON- RESPONSIVE AMENDMENT			
54	08/19/2008	DATE FORWARDED TO EXAMINER			
53.1	07/21/2008	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
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52	07/21/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
51	06/12/2008	MAIL RESTRICTION REQUIREMENT	312		-1
50		REFERENCE CAPTURE ON IDS			
49	04/30/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
48	06/09/2008	REQUIREMENT FOR RESTRICTION / ELECTION			
47	04/30/2008	INFORMATION DISCLOSURE STATEMENT (IDS)			

		FILED			
46	04/08/2008	CORRESPONDENCE ADDRESS CHANGE			
45	01/09/2008	MISCELLANEOUS INCOMING LETTER			
44	01/22/2008	MAIL-PETITION DECISION - DISMISSED			
43	01/22/2008	PETITION DECISION - DISMISSED			
42	12/03/2007	PETITION ENTERED			
41		MAIL-RECORD PETITION DECISION OF GRANTED RELATED TO INVENTOR IN APPLICATION			
40	01/22/2008	RECORD PETITION DECISION OF GRANTED RELATED TO INVENTOR IN APPLICATION			
39	12/03/2007	RULE 47 / 48 CORRECTION OF INVENTORSHIP PAPERS FILED			
38	01/09/2007	MISCELLANEOUS INCOMING LETTER			
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36	11/13/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
35	01/10/2008	FILING RECEIPT - CORRECTED			
34	12/03/2007	PETITION ENTERED			
33	12/13/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
32	03/08/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)	·		
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30	11/13/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
29	11/26/2007	NON-COMPLIANT PRELIMINARY AMENDMENT			
28	11/19/2007	PRELIMINARY AMENDMENT			
27	09/18/2007	PRELIMINARY AMENDMENT			
26	11/14/2007	MAIL-PETITION DECISION - DISMISSED			
25	11/14/2007	PETITION DECISION - DISMISSED			
24	10/17/2007	PETITION ENTERED			
23	11/14/2007	MAIL-PETITION DECISION - DISMISSED			
22	11/14/2007	PETITION DECISION - DISMISSED			
21	10/17/2007	PETITION ENTERED			
20	07/12/2007	CASE DOCKETED TO EXAMINER IN GAU			
18	06/28/2007	PG-PUB ISSUE NOTIFICATION			
17	06/06/2007	MAIL-PETITION DECISION - DISMISSED			
		IFW TSS PROCESSING BY TECH CENTER			

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16	04/27/2007	COMPLETE			
15	04/27/2007	CASE DOCKETED TO EXAMINER IN GAU			
14	04/10/2007	APPLICATION DISPATCHED FROM OIPE			
13	03/01/2007	PETITION ENTERED			
12	03/16/2007	SENT TO CLASSIFICATION CONTRACTOR			
11.	03/16/2007	APPLICATION IS NOW COMPLETE			
10	02/28/2007	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM		127	6
9	02/28/2007	A SET OF SYMBOLS AND PROCEDURES, PROVIDED TO THE PTO ON A SET OF COMPUTER LISTINGS, THAT DESCRIBE IN			
8	02/28/2007	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
	03/08/2007	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
6	07/24/2006	NOTICE MAILEDAPPLICATION INCOMPLETE FILING DATE ASSIGNED			
5	06/12/2006	CLEARED BY L&R (LARS)			
4	06/12/2006	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
3	06/12/2006	CASE CLASSIFIED BY OIPE			
2	06/10/2006	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	06/05/2006	INITIAL EXAM TEAM NN			

Search Another: Application#

Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

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SCHULTZ & ASSOCIATES 5400 LBJ FREEWAY, SUITE 1200 DALLAS, TX 75240

MAILED
JUN 202011
OFFICE OF PETITIONS

In re Application of Cummings et al.

Application No. 11/448,209

Filed: June 7, 2006

Attorney Docket No. WDS-1690

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 6, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to file a reply within the meaning of 37 CFR 1.113 to the final Office action of December 10, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). A Notice of Abandonment was mailed June 21, 2010..

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) including the fee of \$405 and the submission required by 37 CFR 1.114, (2) the petition fee of \$810, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

This application is being referred to Technology Center AU 3611 for processing of the RCE and for appropriate action by the Examiner in the normal course of business in accordance with 37 CFR 1.114.

Alicia Kelley-Collier Petitions Examiner Office of Petitions



COMMISSIONER FOR PATENTS UNITED STATES PATENT AND TRADEMARK OFFICE P.Q. Box 1450 ALEXANDRIA, VA 22313-1450

Paper No.

FISH & RICHARDSON P.C. P.O. Box 1022 MINNEAPOLIS MN 55440-1022

MAILED JUN 30 2011

OFFICE OF PETITIONS

In re Patent No. 7,907,707

Goel et al.

Issue Date: March 15, 2011

Application No. 11/448,286

Filed: June 7, 2006

DECISION ON

REQUEST FOR

: RECONSIDERATION OF

PATENT TERM ADJUSTMENT

Attorney Docket No. 100101-023500US:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(d)," filed May 13, 2011, requesting that the patent term adjustment determination for the above-identified patent be changed from one thousand, one hundred and five (1105) days to one thousand, two hundred and thirty-eight (1238) days.

The request for reconsideration of patent term adjustment is DISMISSED.

BACKGROUND

On March 15, 2011, the above-identified application matured into US Patent No. 7,907,707 with a patent term adjustment of 1105 This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 37 C.F.R. § 1.705(d).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Patentee maintains entitlement to a period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b), of 590 days.

The period of adjustment of 839 days of examination delay is not in dispute.

The period of reduction of 22 days of Applicant delay is not in dispute.

The 169-day period of overlap between the examination delay and the B-delay is not in dispute.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 C.F.R. § 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

- Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
- (2) Any time consumed by an interference proceeding under 35
 U.S.C. 135(a);
- (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
- (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
- (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

The sole item that is in dispute is the effect of the RCE-cutoff on B-delay: at issue is the period not included in the B-delay for "any time consumed by continued examination of the application requested by the applicant under section 132(b)." See U.S.C. 154(b)(1)(B)(i). The Office maintains that the entire period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period. As such, the over three-year period begins on June 8, 2009 and ends on September 7, 2010, the day before the first RCE was filed, which amounts to 457 (not 590) days.

Patentee argues that the 133-day period between the mailing of the notice of allowance on November 3, 2010 and the issuance of the patent on March 15, 2011 should be included in the period of B-delay, as this time "was not 'consumed by continued examination of the application." As such, Patentee argues that the over three-year period begins on June 8, 2009 (the day after the three-year anniversary of the filing of the application), pauses on September 7, 2010 (the day before the filing of the first RCE), restarts on November 3, 2010 with the mailing of the notice of allowance, and ends on March 15, 2011 with the issuance of the patent.

Patentee's argument has been considered, but not found persuasive. Counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination

¹ Petition, page 2.

of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Req. 56365, 56376 (Sept. 18, 2000) (response to comment 8). the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination" requested by the applicant under section 132(b) within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to

² Petition, page 2.

issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, No. 07-1492, 580 F.Supp.2d 138 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, inter alia, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses $(i)-(ii)^3$. Clause (i) specifies "any time consumed by

³ Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent

continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Websters Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution

shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures4 permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued Further action by the Office is pursuant to that examination. request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay

⁴ Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

Accordingly, at issuance, the Office properly entered 457 additional days of patent term adjustment for the Office taking in excess of 3 years to issue the patent. It follows that Patentee is entitled to a patent term adjustment of 1105 days:

- 839 days of examination delay
- 457 days attributable to the Office taking in excess of 3 years to issue the patent
- 169 days of overlap
- 22 days of applicant delay.

CONCLUSION

In view thereof, no adjustment to the patent term will be made. It follows that a certificate of correction is not required.

Patentee is given two (2) months from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. § 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Any response to this decision should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail, 5 hand-delivery, 6 or facsimile. 7 Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web. 8

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3225.9

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

⁵ Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

⁶ Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

⁷ (571) 273-8300: please note this is a central facsimile number.

⁸ https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html
9 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No.

FISH & RICHARDSON P.C. P.O. Box 1022 MINNEAPOLIS MN 55440-1022

MAILED
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OFFICE OF PETITIONS

In re Patent No. 7,907,707

Goel et al. : DECISION ON Issue Date: March 15, 2011 : REQUEST FOR

Application No. 11/448,286 : RECONSIDERATION OF

Filed: June 7, 2006 : PATENT TERM ADJUSTMENT

Attorney Docket No. 100101-023500US:

This is a decision on the "RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" (renewed petition), filed August 30, 2011. Patentees request that the patent term adjustment indicated on the face of the Letters of Patent be corrected from one thousand, one hundred and five (1105) days to one thousand, two hundred and thirty-eight (1238) days.

The request for reconsideration is granted to the extent that the determination has been reconsidered; however, the request for reconsideration of patent term adjustment is **DENIED** with respect to making any change in the patent adjustment determination under 35 U.S.C. § 154(b) of 1105 days.

BACKGROUND

On March 15, 2011, the above-identified application matured into US Patent No. 7,907,707 with a patent term adjustment of 1105 days.

On May 13, 2011, a petition under 37 C.F.R. § 1.705(d) was filed requesting that patent term adjustment be reflected as one thousand, two hundred and thirty-eight (1238) days.

By decision mailed June 30, 2011, the request for reconsideration was dismissed. The decision indicated that

Patentees are entitled to a patent term adjustment of 1105 days, and therefore, no adjustment to the patent term will be made.

On August 30, 2011, this renewed petition was filed.

By the instant petition, Patentees again dispute the calculation of the "B" delay period of the patent term adjustment. Specifically, patentees' state:

"Patentees submit that B Delay accumulated for a total of 646 days, beginning on June 8, 2009 (the day after the date that is three years after the date on which the application was filed), and ending March 15, 2011 (the date the patent was issued). The Office has excluded from B Delay the number of days corresponding to the period beginning on September 8, 2010 (the date on which a Request for Continued Examination was filed) and ending on March 15, 2011 (the date the patent was issued). However, this entire period should not be excluded from B delay because it does not correspond exactly to continued examination. The Examiner's mailing of a Notice of Allowance Action on November 3, 2010, closed examination of the application on that date. Section 154(b)(1)(B)(i) of Title 35 excludes from B Delay "time consumed by continued examination of the application." The statute does not provide for exclusion from B Delay of time from the mailing of a Notice of Allowance until issuance (a period during which continued examination did not occur."

Renewed petition, pages 1-2.

RELEVANT STATUTE AND REGULATIONS

35 U.S.C. § 154(b) as amended by § 4402 of the American Inventors Protection Act of 1999^1 (AIPA) provides that:

ADJUSTMENT OF PATENT TERM. -

- (1) PATENT TERM GUARANTEES. -
- (A) GUARANTEE OF PROMPT PATENT AND TRADEMARK OFFICE RESPONSES. Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the Patent and Trademark Office to $\frac{1}{2} \left(\frac{1}{2} \right) \left(\frac{1}{2} \right$
- (i) provide at least one of the notifications under section 132 of this title or a notice of allowance under section 151 of this title not later than 14 months after -

¹ Public Law 106-113, 113 Stat. 1501, 1501A-557 through 1501A-560 (1999).

1. 1

- the date on which an application was filed under section 111(a) of this title; or
- (II) the date on which an international application fulfilled the requirements of section 371 of this title;
- (ii) respond to a reply under section 132, or to an appeal taken under section 134, within 4 months after the date on which the reply was filed or the appeal was taken;
- (iii) act on an application within 4 months after the date of a decision by the Board of Patent Appeals and Interferences under section 134 or 135 or a decision by a Federal court under section 141, 145, or 146 in a case in which allowable claims remain in the application; or
- issue a patent within 4 months after the date on which the issue fee was paid under section 151 and all outstanding requirements were satisfied, the term of the patent shall be extended 1 day for each day after the end of the period specified in clause (i), (ii), (iii), or (iv), as the case may be, until the action described in such clause is taken.
- (B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY. - Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including -
- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
- (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
- (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.
- (C) GUARANTEE OR ADJUSTMENTS FOR DELAYS DUE TO INTERFERENCES, SECRECY ORDERS, AND APPEALS. - Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to -
 - (i) a proceeding under section 135(a);
 - (ii) the imposition of an order under section 181; or

- (iii) appellate review by the Board of Patent Appeals and Interferences or by a Federal court in a case in which the patent was issued under a decision in the review reversing an adverse determination of patentability, the term of the patent shall be extended 1 day for each day of the pendency of the proceeding, order, or review, as the case may be.
 - (2) LIMITATIONS. -
- (A) IN GENERAL. To the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

The implementing regulation, 37 C.F.R. \$ 1.702, provides grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

- (a) Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:
- (1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;
- (2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;
- (3) Act on an application not later than four months after the date of a decision by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or 135 or a decision by a Federal court under 35 U.S.C. 141, 145, or 146 where at least one allowable claim remains in the application; or
- (4) Issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied.

(b) Failure to issue a patent within three years of the actual filing date of the application. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:2

In pertinent part, 37 C.F.R. § 1.703 provides for calculation of the periods, as follows:

Period of adjustment of patent term due to examination delay.

- (a) The period of adjustment under § 1.702(a) is the sum of the following periods:
- (1) The number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;
- (2) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;
- (3) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply in compliance with § 1.113(c) was

 $^{^{2}}$ (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

⁽²⁾ Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

⁽³⁾ Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

⁽⁴⁾ Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or:

⁽⁵⁾ Any delay in the processing of the application by the Office that was requested by the applicant.

filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

- (4) The number of days, if any, in the period beginning on the day after the date that is four months after the date an appeal brief in compliance with § 41.37 of this title was filed and ending on the date of mailing of any of an examiner's answer under § 41.39 of this title, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;
- (5) The number of days, if any, in the period beginning on the day after the date that is four months after the date of a final decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145 or 146 where at least one allowable claim remains in the application and ending on the date of mailing of either an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151, whichever occurs first; and
- (6) The number of days, if any, in the period beginning on the day after the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied and ending on the date a patent was issued.
- (b) The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods:³

³ (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued;

⁽²⁾⁽i) The number of days, if any, in the period beginning on the date an interference was declared or redeclared to involve the application in the interference and ending on the date that the interference was terminated with respect to the application; and (ii) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Office due to interference proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension;

⁽³⁾⁽i) The number of days, if any, the application was maintained in a sealed condition under 35 U.S.C. 181; (ii) The number of days, if any, in the

37 C.F.R. 1.703(f) provides that:

The adjustment will run from the expiration date of the patent as set forth in 35 U.S.C. 154(a)(2). To the extent that periods of delay attributable to the grounds specified in \$1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed. The term of a patent entitled to adjustment under \$1.702 and this section shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this section, to the extent that such periods are not overlapping, less the sum of the periods calculated under \$1.704. The date indicated on any certificate of mailing or transmission under \$1.8 shall not be taken into account in this calculation.

OPINION

Patentees' argument has again been considered, but is not persuasive. The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant

period beginning on the date of mailing of an examiner's answer under § 41.39 of this title in the application under secrecy order and ending on the date the secrecy order was removed; (iii) The number of days, if any, in the period beginning on the date applicant was notified that an interference would be declared but for the secrecy order and ending on the date the secrecy order was removed; and (iv) The number of days, if any, in the period beginning on the date of notification under § 5.3(c) of this chapter and ending on the date of mailing of the notice of allowance under 35 U.S.C. 151; and,

⁽⁴⁾ The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

under 35 U.S.C. 132(b). 4 So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentees do not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 C.F.R. 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and C.F.R. 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366,

⁴ Pursuant to 35 U.S.C. 132(b), 37 C.F.R. 1.114 provides for continued examination of an application, as follows:

⁽a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

Payment of the issue fee, unless a petition under § 1.313 is granted;

⁽²⁾ Abandonment of the application; or

⁽³⁾ The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated. (b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under

section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp.2d 138 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, inter alia, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless The time consumed by prosecution of the of the reason. application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii). 5 Clause (i) specifies "any time consumed by continued examination of the application requested by the

⁵ Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Websters Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 C.F.R. 1.53(b) or a continued prosecution application (CPA) under 37 C.F.R. 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance.

Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in <u>Blacklight Power</u>, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. <u>See BlackLight Power</u>, <u>Inc. v. Rogan</u>, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse

to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 C.F.R. 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 C.F.R. 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 C.F.R. 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 C.F.R. 1.97(d). In addition, 37 C.F.R. 1.312 provides for the amendment of an , application after a notice of allowance has been mailed. In fact, the request for examination procedures permit the filing of a request for continued examination under 37 C.F.R. 1.114 even after the issuance of a notice of allowance under 35 U.S.C. See 37 C.F.R. 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 C.F.R. 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but

⁶ Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 C.F.R. 1.53(b).

In this instance, a request for continued examination was filed on September 8, 2010, and the patent issued by virtue of that request on March 15, 2011. Pursuant to 35 U.S.C. § 154(b)(1)(B)(i), the period beginning on September 8, 2010, and ending on March 15, 2011 is not included in calculating Office delay. In view thereof, it is concluded that the patent term adjustment of 1105 days is correct.

CONCLUSION

The request for reconsideration of the revised patent term adjustment is denied.

The Office acknowledges that Patentees previously submitted the \$200 fee set forth in \$1.18(e) on application for patent term adjustment filed May 13, 2011. As this request pertains only to the over 3-year delay issue raised in the application for patent term adjustment, no additional fees are required.

In view thereof, no adjustment to the patent term will be made. It follows that a certificate of correction is not required.

Telephone inquiries regarding this decision may be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

Anthony Knight

Director

Office of Petitions

⁷ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.



UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

THERAVANCE, INC. 901 GATEWAY BOULEVARD SOUTH SAN FRANCISCO CA 94080

In re Application of: LETTER REGARDING

Mammen et al. : PATENT TERM ADJUSTMENT

Application No. 11/448,317: and

Filed: June 7, 2006 : NOTICE OF INTENT TO ISSUE Attorney Docket No. P-157-US2 : CERTIFICATE OF CORRECTION

Title: BIPHENYL DERIVATIVES :

This is in response to the petition pursuant to 37 C.F.R. § 1.705(b) filed September 29, 2010. Applicant requests an adjustment of the initial patent term adjustment from 528 days to 555 days, an increase of 27 days.

The request for reconsideration of the patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **five hundred and fifty-five (555)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On September 17, 2010, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 528 days. The present application for patent term adjustment was timely filed on or before payment of the issue fee. Applicant argues that one period of applicant delay pursuant to 37 C.F.R. § 1.704(b)(7) (sic) was improperly calculated.

37 C.F.R. \S 1.704(c)(7) indicates that the following occurrence constitutes applicant delay:

¹ PALM records indicate that the issue fee has not been submitted as of yet.

[s]ubmission of a reply having an omission (\$1.135(c)), in which case the period of adjustment set forth in \$1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed

On May 8, 2009, the Office mailed a requirement for an election of species. A response was received on May 20, 2009. An office communication was mailed on August 6, 2009, and 85 days after the submission of May 20, 2009, a second response was received on August 13, 2009. An Office communication was mailed on November 16, 2009, and 112 days after the submission of May 20, 2009, a third response was received on December 3, 2009. As such, the Office assessed a reduction of 112 days, pursuant to 37 C.F.R. § 1.704(c)(7).

With this petition, Applicant argues that the proper reduction which should have been assessed was 85 days, since the mailing of November 16, 2009 was a duplicate of the mailing of August 6, 2009. A review of the electronic record shows that the submission of December 3, 2009 contains a similar assertion. The next document in the electronic record is a non-final Office action dated February 4, 2010, and this document does not contain language which refutes this assertion.

It follows that Applicant's argument has been considered, and has been deemed to be persuasive. The proper period of reduction pursuant to 37 C.F.R. § 1.704(c)(7) is 85 days (the period from May 21, 2009 to August 13, 2009), not 112 days (the period from May 21, 2009 to December 3, 2009).

Thus, the proper period of applicant delay is 85 days.

The 640 days of examination delay is not in dispute.

In view thereof, the revised patent term adjustment is 555 (640 - 85) days.

The reduction of 112 days has been removed and a reduction of 85 days has been entered.

² "The present Office communication dated November 16, 2009, is identical in substance to the previous Office Communication dated August 6, 2009."

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The Office of Patent Publication will be notified of this decision so that the present application can be processed into a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Encl. Copy of the Revised Patent Term Adjustment

Day : Monday Date: 10/18/2010



PALM INTRANET

Time: 15:11:08

PTA Calculations for Application: <u>11/448317</u>						
Application Filing Date: 0	06/07/2006	PTO Delay (PTO):	640			
Issue Date of Patent:		Three Years:	0			
Pre-Issue Petitions: 0		Applicant Delay (APPL):	112			
Post-Issue Petitions: 0		Total PTA (days):	555			
PTO Delay Adjustment: 2	27					

Number Date Contents Description PTO 99 10/13/2010 ADJUSTMENT OF PTA CALCULATION BY PTO 1 98 10/13/2010 ADJUSTMENT OF PTA CALCULATION BY PTO 112 91 09/17/2010 MAIL NOTICE OF ALLOWANCE 1 90 09/15/2010 ISSUE REVISION COMPLETED 1 89 09/14/2010 ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING 1 87 09/14/2010 ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING 1 87 09/14/2010 DOCUMENT VERIFICATION 1 86 09/14/2010 NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED 1 85 09/14/2010 CASE DOCKETED TO EXAMINER IN GAU 1 84 09/14/2010 NOTICE OF ALLOWABILITY 1	85	START
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84 09/14/2010 NOTICE OF ALLOWABILITY		
79 09/02/2010 DATE FORWARDED TO EXAMINER		
78 08/31/2010 AMENDMENT AFTER FINAL REJECTION		
77 07/14/2010 MAIL FINAL REJECTION (PTOL - 326)		
76 07/12/2010 FINAL REJECTION		
75 05/15/2010 DATE FORWARDED TO EXAMINER		
74 04/28/2010 RESPONSE AFTER NON-FINAL ACTION		
73 05/07/2010 PARALEGAL TD ACCEPTED		
72 05/07/2010 PARALEGAL TD ACCEPTED		
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48	04/28/2010	TERMINAL DISCLAIMER FILED			
47	02/04/2010	MAIL NON-FINAL REJECTION			
46	02/01/2010	NON-FINAL REJECTION			
43	12/11/2009	DATE FORWARDED TO EXAMINER			
42	12/03/2009	RESPONSE AFTER NON-FINAL ACTION		112	27
41	11/16/2009	MAIL NOTICE OF INFORMAL OR NON- RESPONSIVE AMENDMENT			
28	09/20/2009	DATE FORWARDED TO EXAMINER			
27.1	08/13/2009	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
27		RESPONSE AFTER NON-FINAL ACTION			
26	08/06/2009	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
25	08/04/2009	MISCELLANEOUS ACTION WITH SSP			
24	07/14/2009	DATE FORWARDED TO EXAMINER			
23	05/20/2009	RESPONSE TO ELECTION / RESTRICTION FILED			
22	05/08/2009	MAIL RESTRICTION REQUIREMENT	640		-1
21	05/07/2009	REQUIREMENT FOR RESTRICTION / ELECTION			
20	05/31/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
19	02/14/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			

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16	02/14/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
15		INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
14.7		INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
14		INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
13	01/15/2007	CASE DOCKETED TO EXAMINER IN GAU		
		REFERENCE CAPTURE ON IDS		
11.7	10/17/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
11		INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
10	09/12/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE		
9	06/07/2006	PRELIMINARY AMENDMENT		
8	09/12/2006	CASE DOCKETED TO EXAMINER IN GAU		
7	07/14/2006	PRELIMINARY AMENDMENT		
6	06/27/2006	APPLICATION DISPATCHED FROM OIPE		
5	06/27/2006	APPLICATION IS NOW COMPLETE		
4	06/14/2006	CLEARED BY OIPE CSR		
3	06/14/2006	CASE CLASSIFIED BY OIPE		
2	06/13/2006	IFW SCAN & PACR AUTO SECURITY REVIEW		
1	06/07/2006	INITIAL EXAM TEAM NN		

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents
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www.uspto.gov

AT & T Legal Department - WS Attn: Patent Docketing Room 2A-207 One AT & T Way Bedminster NJ 07921

MAILED
SEP 0 8 2010
OFFICE OF PETITIONS

In re Application of

Mark D. Feuer, et al.

Application No. 11/448,339

Filed: June 7, 2006

Attorney Docket No. 2004-0539

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 9, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, June 30, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 1, 2009. The Notice of Abandonment was mailed February 23, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$1620, and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2613 for appropriate action by the Examiner in the normal course of business on the reply received.

Terri Johnson Petitions Examiner Office of Petitions

cc:

Xiaolei Sun Wolff & Samson PC One Boland Drive West Orange, NJ 07052

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

THE LAW FIRM OF ANDREA HENCE EVANS, LLC 14625 BALTIMORE AVE, #853 LAUREL, MD 20707

MAILED

AUG 09 2010

In re Application of : OFFICE OF PETITIONS

Dale M. Glaze

Application No. 11/448,407 : ON PETITION

Filed: June 7, 2006

Attorney Docket No. Dale Glaze

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 19, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, May 1, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 2, 2008. A Notice of Abandonment was mailed November 10, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$810, and (3) a proper statement of unintentional delay.

It is noted that the petition is signed by applicant and includes an address different from the address of record. Petitioner has appointed a representative to conduct all business before the U.S. Patent and Trademark Office (Office). The Office will not engage in dual correspondence with petitioner and petitioner's representative. Accordingly, petitioner must conduct all future correspondence with this Office through the representative of record. If petitioner no longer wishes to be represented by the representative of record, then a revocation of the power of attorney or patent agent should be submitted. A correspondence address must be included on the correspondence instructing the Office where all future communications are to be mailed. See 37 CFR 1.33(a). A courtesy copy of this decision is being mailed to petitioner at the address noted on the petition; however, all future correspondence will be mailed solely to the correspondence address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

This matter is being referred to Technology Center 3711 for further examination on the merits.

Alicia Kelley

Petitions Examiner
Office of Petitions

cc: DALE GLAZE

486 HWY 197S

MOUNT AIRY, GA 30563

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Law Office of ROBERT C. KLINGER 2591 Dallas Parkway Suite 300 FRISCO TX 75034

MAILED

MAY 1.2 2011
OFFICE OF PETITIONS

In re Application of

Martin Kavanagh

Application No.: 11/448505 Filing or 371(c) Date: 06/07/2006

8505 : DECISION ON 6/07/2006 : PETITION

Attorney Docket Number: 127694.00010

This is a decision in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed March 30, 2011.

This Petition is hereby granted.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due (Notice"), mailed August 10, 2010. The Notice set a non-extendable three (3) month period for reply. No reply having been received, the application became abandoned on November 11, 2010. A Notice of Abandonment was mailed on December 3, 2010.

With the present renewed petition, Applicant has demonstrated non-receipt of the Notice by a preponderance of the evidence.

In view of the foregoing, the petition is granted. The holding of abandonment is hereby withdrawn.

The application will be referred to the Technology Center Art Unit 2878 for re-mailing of the Notice of Allowance and Issue Fee Due and Notice of Allowability and re-setting the period for reply.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions

DATE :02/17/11	Paper No.:
TO SPE OF : ART UNIT 2894	W046014
SUBJECT : Request for Certificate of Correc	tion for Appl. No.: 11448589 Patent No.: 7846811
	CofC mailroom date: 02/07/11
Please respond to this request for a cer	tificate of correction within 7 days.
FOR IFW FILES:	
	orrections as shown in the COCIN document(s) in the should be introduced, nor should the scope or
Please complete the response (see belousing document code COCX .	ow) and forward the completed response to scanning
OR PAPER FILES:	
	orrections as shown in the attached certificate of see below) and forward it with the file to:
Certificates of Correction Bran Randolph Square – 9D10-A Palm Location 7580	
Randolph Square – 9D10-A Palm Location 7580	
Randolph Square – 9D10-A Palm Location 7580	nse to 571-270-9990
Randolph Square – 9D10-A Palm Location 7580 You can last the Directors SPE respo	nse to 571-270-9990
Randolph Square – 9D10-A Palm Location 7580 You can last the Directors SPE respo	Certificates of Correction Branch
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Randolph Square – 9D10-A Palm Location 7580 You can fax the Directors SPE respo	Certificates of Correction Branch Certificates of Correction Branch 571-272-3421
Randolph Square – 9D10-A Palm Location 7580 Camonte Newsome Thank You For Your Assistance The request for issuing the above-ide Note your decision on the appropriate box.	Certificates of Correction Branch Certificates of Correction Branch 571-272-3421 entified correction(s) is hereby:
Randolph Square – 9D10-A Palm Location 7580 ***********************************	Certificates of Correction Branch Certificates of Correction Branch 571-272-3421 entified correction(s) is hereby: All changes apply.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

PTOL-306 (REV. 7/03)

SPE Art Unit
U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

2894

/Kimberly Nguyen/

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE CERTIFICATE OF CORRECTION

	Dana 4 of 4
PATENT NO. : 7,846,811	Page <u>1</u> of <u>1</u>
APPLICATION NO.: 11/448,589	
ISSUE DATE : December 7, 2010	
INVENTOR(S) : Flavio Francesco Villa et al.	
It is certified that an error appears or errors appear in the above-identified patent and to is hereby corrected as shown below:	hat said Letters Patent
In Claim 1, Column 7, Line 29 of the patent, "said monolithic body; and wherein forming at read said monolithic body; and wherein forming at least one	least one" should
In Claim 12, Column 8, Line 29 of the patent, "filling said buried cavity uniformly with a grow should read filling said buried cavity uniformly with a grown insulating	ving insulating"
In Claim 22, Column 10, Line 8 of the patent, "said monolithic body; and wherein forming a read said monolithic body; and wherein forming at least one	t least one" should

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Graybeal Jackson LLP 400 108th Avenue NE, Suite 700 Bellevue, WA 98004

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850 MAILED

DEC 232010

OFFICE OF PETITIONS

In re Application of **Yasuhiko KAWAGUCHI**, et al. Application No. 11/448,753 Filed: June 8, 2006 Attorney Docket No. **128333**

DECISION GRANTING PETITION UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 20, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 10, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.\(^1\)

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 2853 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET

JUL 21 2011

MAILED

ALEXANDRIA VA 22314

OFFICE OF PETITIONS

In re Application of

Alting

Application No. 11/448,913

DECISION ON PETITION

Filed: June 8, 2006

Attorney Docket No. 286408US

This is a decision on the petition under 37 CFR 1.182, filed, June 17, 2011, to change the name of inventor "Kristen Alting" to -Kirsten Luetzeler --.

The petition is **GRANTED**.

Office records have been updated to reflect the inventor's change of name. A corrected Filing Receipt, which reflects the inventor's change of name, accompanies this decision on petition.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3215. Any questions concerning the examination procedures or status of the application should be directed to the Technology Center.

This application is being referred to the Assignment Branch for a change of the assignment records. Thereafter the application will be referred to the Office of Data Management for further processing in the normal course of business.

Charlema Grant

Petitions Attorney

Office of Petitions

ATTACHMENT: Corrected Filing Receipt



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Vriginia 22313-1450 www.uspio.gov

APPLICATION	FILING or	GRP ART				
NUMBER	371(c) DATE	UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/448,913	06/08/2006	1765	1664	286408US	20	1

22850
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

CONFIRMATION NO. 5213
CORRECTED FILING RECEIPT



Date Mailed: 07/20/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections

Applicant(s)

Kirsten Luetzeler, Muenster, GERMANY; Franz-Erich Baumann, Duelmen, GERMANY; Sonja Bollmann, Haltern am See, GERMANY; Andreas Dowe, Borken, GERMANY; Roland Wursche, Duelmen, GERMANY; Georg Schafer, Datteln, GERMANY;

Assignment For Published Patent Application

DEGUSSA AG, Duesseldorf, GERMANY

Power of Attorney: The patent practitioners associated with Customer Number 022850

Domestic Priority data as claimed by applicant

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)
GERMANY 10 2005 026 264.3 06/08/2005

If Required, Foreign Filing License Granted: 06/30/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/448,913**

Projected Publication Date: Not Applicable

Non-Publication Request: No Early Publication Request: No

page 1 of 3

Title

TRANSPARENT MOLDING COMPOSITION

Preliminary Class

428

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

page 2 of 3

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

DATE	: <u>October 21, 2010</u>	
TO SPE OF SUBJECT	: ART UNIT1624 : Request for Certificate of Correct	ion for Appl. No/11/448948 -74674903
Please response 7 days	and to this request for a cert	tificate of correction within
FOR IFW FII	LES:	
the IFW app		orrections as shown in the COCIN document(s) in tter should be introduced, nor should the scope or
•	plete the response (see belo ent code COCX.	ow) and forward the completed response to scanning
FOR PAPER	R FILES:	
		orrections as shown in the attached certificate of see below) and forward it with the file to:
Rando	icates of Correction Brand olph Square – 9D10-A Location 7580	ch (CofC)
Faiiii	Location 7300	Magdalene Talley
		Certificates of Correction Branch
		571-272-0423
Thank You	For Your Assistance	
	for issuing the above-ide on the appropriate box.	ntified correction(s) is hereby:
	Approved	All changes apply.
	Approved in Part	Specify below which changes do not apply.
	Denied	State the reasons for denial below.
Comments:		
		
-		

PTOL-306 (REV. 7/03)

SPE Art Unit

V.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

SPE RESPONSE FOR CERTIFICATE OF CORRECTION



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC ONE FINANCIAL CENTER BOSTON MA 02111

MAILED

JAN 312011

OFFICE OF PETITIONS

In re Patent No. 7,809,372 : DECISION ON

Jaakko Rajaniemie : PATENT TERM ADJUSTMENT Issue Date: October 5, 2010 : AND NOTICE OF INTENT

Application No. 11/449,025 : TO ISSUE

Filed: June 8, 2006 : CERTIFICATE OF

Attorney Docket No. 39700-522C02US : CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM INDICATED ON FACE OF PATENT", filed December 3, 2010. Patentees request that the patent term adjustment indicated on the patent be corrected from one thousand eighty-three (1083) days to one thousand, one hundred sixteen (1163) days.

The petition is **GRANTED**.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **one thousand one hundred** sixteen (1116) days.

On October 5, 2010, the above-identified application matured into U.S. Patent No. 7,809,372. Patentee timely filed an application for patent term adjustment under 37 CFR 1.705(d) on December 3, 2010. Patentee asserts that he should not have been assessed applicant delay of sixty-one (61) days for the submission of a Rule 312 Amendment on August 6, 2010, after the Notice of Allowance was mailed on May 28, 2010. Rather, Patentees assert that they should have only been assessed applicant delay of twenty-eight (28) days.

37 CFR 1.704(c)(10) states that applicant delay shall be assessed "beginning on the date the...paper was filed and ending on the mailing date of the Office action or notice in response to the... paper". Here, Applicant filed the Rule 312 Amendment on August 6, 2010, and the Office mailed a "Response to Rule 312 Communication" on September 2, 2010. Accordingly, Applicants should have been accorded 28 days of delay for the filing of the Rule 312 Amendment, not 61 days as reflected in PAIR.

In view thereof, the correct determination of PTA at the time of issuance is one thousand one hundred sixteen (1116) days (1154 (835+319) days of PTO delay, reduced by 38 (10+28) days of applicant delay).

Receipt of the \$200.00 fee set forth in 37 C.F.R. \$1.18(e), previously paid on February 22, 2010, is acknowledged.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 C.F.R. § 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred sixteen (1116) days subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Anthony Knight

Director

Office of Petitions

Enc: draft certificate of correction

UNITED STATES PATENT AND TRADEMARK OFFICE **DRAFT CERTIFICATE OF CORRECTION**

PATENT

: 7,809,372 B2

DATED

: October 5, 2010

INVENTOR(S): Rajaniemie

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1083 days.

Delete the phrase "by 1083 days" and insert - by 1116 days--



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

UNISYS CORPORATION **UNISYS WAY** MAIL STATION: E8-114 **BLUE BELL PA 19424**

MAILED

APR 22 2011

OFFICE OF PETITIONS

In re Application of

Mazzagatti, et al.

Application No. 11/449,092

Filed: June 8, 2006

Attorney Docket No. U1025/20023 (TN 456)

DECISION ON PETITION

UNDER 37 CFR 1.78(a)(3)

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed March 28, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the concurrently filed amendment.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- the reference required by 35 U.S.C. § 120 and 37 CFR **(1)** 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- the surcharge set forth in § 1.17(t); and **(2)**
- a statement that the entire delay between the date the **(3)** claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional applications, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3230. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 2158 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications and the RCE and amendment filed March 28, 2011.

Shury Wells Bartly
Shirene Willis Brantley
Senior Petitions Attorney

Office of Petitions

ATTACHMENT: Corrected Filing Receipt



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspio.gov

APPLICATION	FILING or	GRP ART				r
NUMBER	371(c) DATE	UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/449,092	06/08/2006	2158	1350	TN456.US	27	1

27276
UNISYS CORPORATION
Office of the General Counsel
801 Lakeview Drive, Suite 100
MailStop: 2NW
BLUE BELL, PA 19422

CONFIRMATION NO. 6022 CORRECTED FILING RECEIPT



Date Mailed: 04/11/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections

Applicant(s)

Jane Campbell Mazzagatti, Blue Bell, PA;

Steven L. Rajcan, Glenmoore, PA;

Robert R. Buckwalter, West Chester, PA;

Assignment For Published Patent Application

Unisys Corporation, Blue Bell, PA

Power of Attorney: The patent practitioners associated with Customer Number 27276

Domestic Priority data as claimed by applicant

This application is a CIP of 10/666,382 09/19/2003 PAT 7,158,975 and is a CIP of 11/185,620 07/20/2005 ABN

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 07/03/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/449,092**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title'

K engine - process count after build in threads

Preliminary Class

707

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).



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UNISYS CORPORATION Office of the General Counsel 801 Lakeview Drive, Suite 100 MailStop: 2NW BLUE BELL PA 19422

MAILED
FEB 1 3 2012
OFFICE OF PETITIONS

In re Application of Mazzagatti et al.

Application No. 11/449,092

Filed: June 8, 2006

Attorney Docket No. TN456.US

For: K ENGINE - PROCESS COUNT

AFTER BUILD IN THREADS

ON PETITION

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment in the above-identified application, the petition under 37 CFR 1.137(b) to revive the above-identified application, and the petition under 37 CFR 1.78(a)(3) to add an inadvertently omitted priority claim. All petitions were filed on January 18, 2012.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The petition under 37 CFR 1.78(a)(3) is **DISMISSED** as moot.

This application became abandoned for failure to timely reply to the non-final Office action, mailed May 23, 2011, which set an extendable three month period for reply. No extensions of time being obtained and no reply being filed, the application became abandoned on August 24, 2011. A Notice of Abandonment was mailed on December 2, 2011.

Petitioners assert they did not realize that the case had been abandoned, only discovering this fact following the review of status of a number of related cases. It appears petitioner are asserting that allege the May 23, 2011 non-final Office action was not received at the correspondence address of record because abandonment occurs by operation of law, not by the Office giving notice of abandonment.

The showing required to establish non-receipt of an Office communication must include:

- 1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
- 2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹

A review of the record indicates no irregularity in the mailing of the May 23, 2011 non-final Office action, and in the absence of any irregularity there is a strong presumption that the communication was properly mailed to the applicants at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communication was not in fact received.

The showing in the instant petition is not sufficient to withdraw the holding of abandonment because practitioner did not attest to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. Practitioner did not include a master docket record showing where the due date for the Office action would have been entered, had the Office action been received.

The petition under 37 CFR 1.181 is dismissed.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed.;
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

Petitioners have submitted a RCE and required \$930.00 fee and amendment and petition under 37 CFR 1.78(a)(3) in reply to the May 23, 2011 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the May 23, 2011 non-final Office action, and the \$8106.00 petition fee.

The petition under 37 CFR 1.37(b) is granted.

Regarding the petition under 37 CFR 1.78(a)(3), the amendment filed with the petition appears to be a copy of the amendment filed on March 28, 2011. As the Office granted the petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. 120 for benefit of

¹ See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

priority to Application Nos. 10/666,382 and 11/185,620 on April 22, 2011, the present petition is **dismissed as moot**. If another petition under 37 CFR 1.78(a)(3) is filed, please take care to reference the correct desired applications in the amendment accompanying the petition.

If another petition under 37 CFR 1.78(a)(3) is filed, it should be addressed as follows:

By mail:

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Alexandria, VA 22313-1450

By hand:

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By fax:

(571) 273-8300

ATTN: Office of Petitions

By internet:

EFS-Web

www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center

at (866) 217-9197)

This application is being referred to Technology Center AU 2169 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley Senior Petitions Attorney

Shune Mulis Bankley

Office of Petitions

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JUL 14 2011
OFFICE OF PETITIONS

HICKMAN PALERMO TRUONG & BECKER, LLP 2055 GATEWAY PLACE SUITE 550 SAN JOSE CA 95110

In re Application of

Motoyama et al.

Application Number: 11/449,133

Filing or 371(c) Date: 06/07/2006

Attorney Docket Number: 49986-0581

ON PETITION

This is a decision on the petition to defer issuance filed on June 3, 2011.

The petition is granted.

In the absence of an extraordinary circumstance, it has been the policy of the Office to defer issance of a patent, upon request, for a period of up to one (1) month only. Accordingly, since the period of deferral requested has passed, the petition to defer issue is granted.

If an additional deferral period is required, another petition and fee should be promptly submitted. The petition must include a showing of extraordinary circumstances.²

The application is being referred to Technology Center 3624 for consideration of the papers filed on June 3, 2011.

Telephone inquiries specific to this matter should be directed to the undersigned at 571 272-3231.

Douglas I. Wood

Senior Petitions Attorney

Office of Petitions

¹See MPEP 1306.01.

²See Note 1, supra.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

FISH & RICHARDSON P.C. (BO) P.O. BOX 1022 MINNEAPOLIS MN 55440-1022 MAILED
SEP 07 2011
OFFICE OF PETITIONS

In re Application of

Lotien Richard Huang et al. Application No. 11/449,149

Filed: June 8, 2006

Attorney Docket No. 25594-0006001

NOTICE

This is a notice regarding your request filed August 18, 2011, for acceptance of a fee deficiency submission under 37 CFR 1.28.

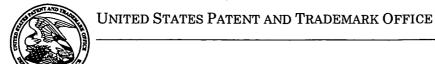
The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.

/JoAnne Burke/ JoAnne Burke Petitions Examiner Office of Petitions



Commissioner for Patents
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Alexandria, VA 22313-1450
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EDWARDS ANGELL PALMER & DODGE LLP P.O. BOX 55874 BOSTON MA 02205

MAILED

AUG 15 2011

In re Application of

OFFICE OF PETITIONS

Akitoshi Ito et al.

Application No. 11/449,159

DECISION ON PETITION

Filed: June 7, 2006

Attorney Docket No. 63557(307571)

This is a decision on the petition, filed July 5, 2011, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The Notice of Abandonment mailed on June 21, 2011 held this application to have gone abandoned for failure to file an appeal brief following the mailing of the Notice of Panel Decision from Pre-Appeal Brief Review (Notice) on May 3, 2011.

Petitioner contends that the Notice of Abandonment was mailed in error since "the period for filing an appeal brief was reset to one month from the mailing of the May 3, 2011 decision, subject to the extension available under 37 CFR 1.136." A review of the file record supports this contention. Therefore, since the time period for reply was reset, as of the mail date of this decision, the application is not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby **VACATED** and the holding of abandonment **WITHDRAWN**.

Petitioner should note that the time period for filing the appeal brief is as set forth in the Notice of Panel Decision from Pre-Appeal Brief Review (Notice) of May 3, 2011.

Telephone inquires concerning this decision should be directed to JoAnne Burke at 571-272-4584.

This application is being referred to Technology Center AU 1649 to await the filing of an appeal brief or other appropriate reply by the applicant.

/Ramesh Krishnamurthy/ Ramesh Krishnamurthy Petitions Examiner Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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NOV 05 2010

MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO IL 60661

OFFICE OF PETITIONS

In re Patent No. 7,664,200

ARIYAVISITAKUL, et al

Issue Date: February 16, 2010

Application No. 11/449,413

Filing Date: June 8, 2006

Attorney Docket No. 17286US02

: DECISION ON REQUEST

: FOR

: RECONSIDERATION OF

: PATENT TERM ADJUSTMENT

This is a decision on the petition filed on June 11, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted from eight hundred one (801) days to eight hundred two (802) days.

The petition under 37 CFR 1.705(d) to correct the patent term adjustment is **DISMISSED AS UNTIMELY FILED.**

Patentee is given TWO (2) MONTHS to respond to this decision. No extensions of time will be granted under 37 CFR 1.136(a).

Patentee disputes the sixteen (16) day period of reduction for applicant delay pursuant to 37 CFR 1.704(c)(10) for the filing of an amendment under 37 CFR 1.312 on December 15, 2009, after the date of mailing of the notice of allowance.

35 U.S.C. 154(b) provides for patent term adjustment for examination delay. Pursuant to 35 U.S.C. 154(b)(3) and implementing regulation 37 CFR 1.705(d), any request for reconsideration of the patent term adjustment indicated on the patent must be filed within two (2) months of the date the

patent issued and must comply with the requirements of 37 1.705(b)(1) and (b)(2).

On September 22, 2009, the Office mailed the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application indicating the patent term adjustment was 564 days as of the mailing date of the notice of allowance. Thereafter, on January 27, 2010, the Office mailed the revised Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice revealed that the initial patent term adjustment of 564 days was further reduced by 16 days pursuant to 37 CFR 1.704(c)(10) for a revised total patent term adjustment of 548 days. On February 16, 2010, the application issued as U.S. Patent No. 7,664,200. Patentee did not file a request for reconsideration under 37 CFR 1.705(d) of the revised patent term adjustment regarding the period of reduction under 37 CFR 1.704(c)(10) within two (2) months after the date the patent issued. Rather, patentee filed a REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH on May 5, 2010, requesting recalculation of the patent term adjustment on the sole basis of the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). On May 11, 2010, the Office mailed a decision granting the request for recalculation and increasing the patent term adjustment by 253 days pursuant to 37 CFR 1.702(b) for a total of 801 days. On June 11, 2010, patentee filed the present petition under 37 CFR 1.705(d) raising the period of reduction pursuant to 37 CFR 1.704(c)(10) for the first time.

As the present request for reconsideration was not filed until June 11, 2010, which is over two (2) months after the date the patent issued, it is appropriate to dismiss this petition as untimely filed under 37 CFR 1.705(d).

The Office acknowledges the submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Application No. 11/449,413

Patent No. 7,664,200

Page 3

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christma Partere Donnell

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions



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JAMES G. STEWART PC 335 NE 128TH AVENUE PORTLAND OR 97230 MAILED

JAN 312011

OFFICE OF PETITIONS

In re Application of John M. Epley et al. Application No. 11/449,497

Filed: June 7, 2006

Attorney Docket No. 103419-0001

: DECISION ON PETITION : UNDER 37 CFR 1.78(a)(3)

and

: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition filed April 28, 2010, under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed non-provisional application 10/715,871, and under 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application 60/427,484, both of which are set forth in the amendment filed with the petition.

The petitions are **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Additionally, the instant nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application(s) as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application(s) claiming the benefit of the prior-filed provisional application(s) must have been filed within twelve months of the filing date of the prior-filed provisional application(s).

In reviewing the chain of applications to which applicant is seeking a claim for priority, it is noted that at Application No. 10/715,871 has not claimed the benefit of provisional

application no. 60/427,484. Where an application claims a benefit under 35 U.S.C. 120 of a chain of applications, the application must make a reference to the first (earliest) application and every intermediate application. See Sampson v. Ampex Corp., 463 F.2d 1042, 1044-45, 174 USPQ 417, 418-19 (2d Cir. 1972); Sticker Indus. Supply Corp. v. Blaw-Knox Co., 405 F.2d 90, 93, 160 USPQ 177, 179 (7th Cir. 1968); Hovlid v. Asari, 305 F.2d 747, 751, 134 USPQ 162, 165 (9th Cir. 1962). See also MPEP § 201.11. In addition, every intermediate application must also make a reference to the first (earliest) application and every application after the first application and before such intermediate application. MPEP Section 201.06(d). Therefore, since it does not appear that Application No. 10/715,871 references the prior-filed application and every intermediate application as required by 37 CFR 1.78(a)(2)(i), petitioner herein may wish to consider filing a petition under 37 CFR 1.78(a)(6) in that file.

Before the petition under 37 CFR 1.78(a)(3) can be granted in the present application, petitioner must 1) file a petition under 37 CFR 1.78(a)(6) in Application No. 10/715,871; and, 2) file a renewed petition under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) in the instant application, accompanied by either a Supplemental Application Data Sheet (signed in compliance with 37 CFR 1.33(b) and in compliance with 37 CFR 1.76) or a substitute amendment (complying with the provisions of 37 CFR 1.121).

Further correspondence with respect to this matter should be addressed as follows:

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By fax:

(571) 273-8300

ATTN: Office of Petitions

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Christopher Bottorff

Supervisor

Office of Petitions

DATE :	9/30/10	Paper No.:
TO SPE OF :	ART UNIT <u>26/7</u>	1, 4, 4
SUBJECT : 1	Request for Certificate of Corre	ection for Appl. No.: <u>///4/90/92</u> Patent No.: <u>27565</u>
Please respond	d to this request for a ce	ertificate of correction within 7 days.
FOR IFW FILE	<u>s</u> :	,
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Please completusing documen	te the response (see be it code COCX.	low) and forward the completed response to scannir
FOR PAPER F	ILES:	
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Certifica Randolp Palm Lo The request fo Note your decision on the	ase complete this form Ites of Correction Branch Square – 9D10-A Ication 7580	(see below) and forward it with the file to: nch (CofC) Virginia Tolbert Certificates of Correction Branch 571-272-0460 Thank You For Your Assista
Certifica Randolp Palm Lo The request fo Note your decision on to	ase complete this form Ites of Correction Branch Square – 9D10-A Ication 7580 Ir issuing the above-ide appropriate box.	(see below) and forward it with the file to: nch (CofC) Overginia Tolbert Certificates of Correction Branch 571-272-0460 Thank You For Your Assistate tentified correction(s) is hereby:
Certifica Randolp Palm Lo The request for Note your decision on the part of t	ase complete this form these of Correction Branch Square – 9D10-A cation 7580 or issuing the above-id the appropriate box. opproved	(see below) and forward it with the file to: nch (CofC) Overginia Tolbert Certificates of Correction Branch 571-272-0460 Thank You For Your Assistate entified correction(s) is hereby: All changes apply.

/Stephen D'Agosta/ prilmary exmr, AU 2617

10/20/1010

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP 1250 CONNECTICUT AVENUE, NW SUITE 700 WASHINGTON DC 20036

MAILED

SEP 0'8 2010

In re Patent No. 7,719,638 : **OFFICE OF PETITIONS**

Application No. 11/449,721

Filed: June 9, 2006 : ON PETITION

Issued: May 18, 2010 :

Attorney Docket No. 062521

This is a decision on the petition filed August 3, 2010, which is being treated as a request under 37 CFR 3.81(b)¹ to change the address of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3206. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Liana Walsh

Petitions Examiner Office of Petitions

¹ See MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

Doc Code: PET.PTA.RCAL

Document Description: Request for Recalculation in view of Wyeth

Approved for use through 02/28/2011. OMB 0651-0020

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT INI VIEW OF MOETH

IN VIEW OF WYETH				
Attorney Docket Number: MOST3001P/C/JEK	Patent Number: 7665265			
Filing Date (or 371(b) or (f) Date): 2006-06-09	Issue Date: 2010-02-23			
First Named Inventor: Stefan Simon Gustaaf Moriau				
Title: FLOOR PANELS WITH EDGE CONNECTORS				

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature /ThomasJMoore/	Date 2010-08-20			
Name (Print/Typed) Thomas J. Moore	Registration Number 28974			
Note: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*.				
*Total of forms are submitted.				

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Instruction Sheet for: REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH*

(Not to be Submitted to the USPTO)

This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A).

This form must be filed within 180 days of the day the patent was granted, with the following exception:

Patentees who received a decision from the USPTO under the USPTO's pre-<u>Wyeth</u> interpretation of 35 U.S.C. 154(b)(2)(A) may file a request for reconsideration of that decision if such a request for reconsideration is filed within **two months** of the date of the decision (37 CFR 1.181(f)). If the patentee's sole basis for requesting reconsideration of the decision is the USPTO's pre-<u>Wyeth</u> interpretation of 35 U.S.C. 154(b)(2)(A), the request for reconsideration need only state that reconsideration is being requested in view of <u>Wyeth</u> (this form may be used for this purpose if it is filed within **two months** of the date of the decision from the USPTO).

Do not use this form if the application has been allowed, but not yet issued as a patent.

- 1. For patents issued before March 2, 2010: A request for reconsideration under 37 CFR 1.705(d) and the fee set forth in 37 CFR 1.18(e) are not required, provided that the patentee's sole basis for requesting recalculation of the PTA in the patent is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A) and this form is filed within 180 days of the day the patent was granted.
- 2. For patents issued on or after March 2, 2010 (do not use this form): Patentees seeking a revised PTA in a patent issued on or after March 2, 2010, must file a request for reconsideration under 37 CFR 1.705(d) that complies with the requirements of 37 CFR 1.705(b)(1) and (b)(2) within two months of the day the patent issued.

For more information, see "Notice Concerning Calculation of the Patent Term Adjustment With Respect to the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A)" available on the USPTO Web site at http://www.uspto.gov/patents/law/notices/2010.jsp.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
- 2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 09/08/2010

BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314-1176

Applicant : Stefan Simon Gustaaf Moriau : DECISION ON REQUEST FOR : RECALCULATION of PATENT

Patent Number : 7665265 Issue Date : 02/23/2010 : TERM ADJUSTMENT IN VIEW

Application No: 11/449,806 : OF WYETH AND NOTICE OF INTENT TO Filed : 06/09/2006 : ISSUE CERTIFICATE OF CORRECTION

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 244 days. The USPTO will sua sponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/04/2010

BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314-1176

Applicant: Stefan Simon Gustaaf Moriau: DECISION ON REQUEST FOR
Patent Number: 7647741

**RECALCULATION of PATENT

Patent Number: 7647741: RECALCULATION of PATENTIssue Date: 01/19/2010: TERM ADJUSTMENT IN VIEW

Application No: 11/449,834 : OF WYETH AND NOTICE OF INTENT TO Filed : 06/09/2006 : ISSUE CERTIFICATE OF CORRECTION

: 1550E CERTIFICATE OF CORRECTION

:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be ${f 259}$ days. The USPTO will ${\it suasponte}$ issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
11/449,849	06/09/2006	Jeffrey Danowitz	31654	7673	
7590 11/17/2010 MARTIN D. MOYNIHAN d/b/a PRTSI, INC.			EXAMINER		
			PATEL, NIRAV G		
P.O. BOX 16446 ARLINGTON, VA 22215			ART UNIT	PAPER NUMBER	
, (2 (3, 1			2624	•	
		•	MAIL DATE	DELIVERY MODE	
			11/17/2010	PAPER	

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

The request to print a color drawing reference as the first paragraph in the portion of the specification containing a brief description of the drawings as required by 37 CFR 1.84 and MPEP § 608.02 has been received by the United States Patent and Trademark Office and will be entered into the specification.

571-272-4200 or 1-888-786-0101 Application Assistance Unit Office of Data Management



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

November 17, 2010

MARTIN D. MOYNIHAN d/b/a PRTSI, INC. P.O. BOX 16446 ARLINGTON VA 22215

In re Application of

Jeffrey Danowitz : **DECISION ON PETITION**

Application No. 11449849

Filed: 06/09/2006 : *ACCEPTANCE OF COLOR*

Attorney Docket No. 31654 : **DRAWINGS**

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) June 9, 2006.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

- 1. The fee set forth under 37 C.F.R. 1.17(h),
- 2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
- 3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is <u>GRANTED</u>.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Donald Fairchild/ Office of Data Management Publications Branch



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Browdy and Neimark, PLLC

1625 K Street NW, Suite 1100

Washington, DC 20006

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AUG 12:2011

OFFICE OF PETITIONS

In re Application of

Moussa B.H. YOUDIM, et al.

Application No. 11/449,862

Filed: June 9, 2006

Attorney Docket No. YOUDIM2.1B

DECISION GRANTING PETITION

UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed August 11, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 28, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.¹

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 1612 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.





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United States Patent and Trademark Office
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Alexandria, VA 22313-1450

MILLEN, WHITE, ZELANO & BRANIGAN, PC 2200 CLARENDON BLVD SUITE 1400 ARLINGTON VA 22201 MAILED
NOV 03 2010
OFFICE OF PETITIONS

In re Application of

Francisco Xavier TALAMAS et al.

Application No. 11/449,868

Filed: June 9, 2006

Attorney Docket No. MEMORY-0057

DECISION ON PETITION

This is a decision on, the renewed request under 37 CFR 1.26, or alternatively, a petition under 37 CFR 1.182 or 37 CFR 1.183, filed April 1, 2010, seeking "refund of \$15,410 for the fees charged to Counsel's Deposit Account no. 13-3402 on November 20, 2006."

The request under 37 CFR 1.26 is **DISMISSED**.

The petition under 37 CFR 1.183 is **DISMISSED**.

On the Refund Request under 37 CFR 1.26

The instant application was filed on June 9, 2006, without payment of fees. As filed, the instant application contained 73 claims. Of these 73 claims, 37 were multiply dependent, i.e., claims 3-6, 9, 10, 16-18, 20-28, 31-37, 39, 40, 45, 49, 52, 57 - 62, and 69. On that same date, applicants filed a Preliminary Amendment to the claims, noting "[t]he purpose of this Preliminary Amendment is to eliminate multiple dependent claims in order to avoid the additional fee." However, the preliminary amendment failed to eliminate the multiple dependency of claim 62.

On July 5, 2006, the Office mailed "A Notice to File Missing Parts of Nonprovisional Application" (Notice). The Notice explicitly stated "Total additional claim fee(s) for this application is \$18260" that included a fee of \$200 for one independent claim over 3, \$17,700 for a total of 354 dependent claims over 20, and a \$360 surcharge for the remaining multiple dependent claim. The Notice also listed a number of other fees that were due, pertaining to filing, search, examination, and application size. The Notice also stated that the applicants could either submit the required additional claim fees or cancel the additional claims for which fees are due.

On November 6, 2006, applicants filed a response to the Notice which included, a document entitled "Response to Notice to File Missing Parts" (Response), an executed Declaration, and a

check in the amount of \$4680.00. The Response referenced the preliminary amendment and included a statement of authorization "to charge fees under 37 CFR § 1.16 and § 1.17 which may be required to facilitate this filing, or credit any overpayment to Deposit Account #13-3402." No further amendments were made to the application. Accordingly, the Office charged counsel's deposit account two charges totaling \$15,410, to cover the balance in fees that were due.

In a letter to the applicants' representative, dated December 18, 2006, the Office declined to refund the amount of \$15,410, charged to counsel's deposit account. A status request was filed on April 15, 2008, requesting the status of a second request for refund filed on July 13, 2007. A copy of the Office's response dated December 18, 2007, declining the request has been included with the instant petition. The instant petition was filed November 19, 2008, renewing the earlier requests for a refund of the amount of \$15,410, charged to counsel's deposit account.

Under 35 U.S.C. 42(d) and 37 CFR 1.26, the Office may refund: (1) a fee paid by mistake (e.g., fee paid when no fee is required); or (2) any fee paid in excess of the amount of fee that is required. See Ex parte Grady, 59 USPQ 276, 277 (Comm'r Pat. 1943), the statutory authorization for the refund of fees under the "by mistake" clause is applicable only to a mistake relating to the fee payment (see MPEP \S 607.02), that is, whether the fee is due or not. When an applicant or patentee takes an action "by mistake", the submission of fees required to take that action is not a "fee paid by mistake" within the meaning of 35 U.S.C. 42(d).

Inadvertence or typographical error notwithstanding, on June 9, 2006, applicants' representative submitted the instant application and preliminary amendment. In response thereto, the Office mailed applicants' representative the Notice stating the fee amounts that were due and providing applicants with an opportunity to further amend the present application. It does not appear that applicants' representative reviewed the application or the preliminary amendment at this point to ensure that the desired claims were filed in the application and that the appropriate fee(s) had been assessed therefor. Any assessment of filing fee or submission of claims cannot be considered an error on the part of the Office.

The filing fee is a statutory requirement, see 35 USC 111(a)(3). As such, it must be paid by the applicants. Applicants' representative amended the application on December 19, 2006, to remove the multiple-dependency of claim 62. This amendment occurred after the payment for the multiple-dependent claim was made. In accordance with Ex parte Hartman, 145 USPQ 402 (Comm'r Pat. 1965),

"since the statutes require a \$30 fee upon filing of an application, it is clear that such fee cannot be refunded merely because of the manner in which the application is prosecuted."

Therefore, amendment of the claims is not a basis for requesting refund.

In the instant application, although the intent of the preliminary amendment filed June 9, 2006, may have been "to eliminate multiple dependent claims in order to avoid the additional fee," the claims as submitted therewith did include multiple-dependent claim 62. Petitioner should note

that the filing of the preliminary amendment that included the single multiple dependent claim is an action taken by the applicants. The submission of fees required therefor is not a "fee paid by mistake" within the meaning of 35 USC 42(d). Accordingly, the Office cannot grant the requested refund under 37 CFR 1.26.

On the Petitions under 37 CFR 1.182 and 37 CFR 1.183

The provisions of 37 CFR 1.182 apply to situations "not specifically provided for in the regulations." As the instant request for refund is covered by the provisions of 37 CFR 1.26, its further consideration under 37 CFR 1.182 is not warranted. However, in view of the petitioner's request that "[a]ssuming that applicants are not entitled to a refund for not complying with some requirement of 37 CFR 1.26 (or any other section of the Regulations), then applicants request that this requirement be waived and that they be refunded the amount of \$15,410." In view thereof, the request is considered below under the provisions of 37 CFR 1.183.

In order for a petition under 37 CFR 1.183 to be granted, petitioner must demonstrate the existence of an extraordinary situation where justice requires waiver of one or more federal regulations. Petitioner's contention is that applicants' error was "clearly inadvertent and unintentional" and that "[i]t would be inequitable for the PTO to receive a windfall of \$15,410 due to applicants' mistake, particularly when the PTO has performed no services in exchange for this payment."

The statutory authorization for the refund of fees provided in 35 U.S.C. 42(d) under the "by mistake" clause is applicable only to a mistake relating to the fee payment. When an applicant or patentee takes an action "by mistake", as here, the submission of fees required to take that action is not a "fee paid by mistake" within the meaning of 35 U.S.C. 42(d). Inasmuch as the "fee paid by mistake" standard is statutory rather than merely regulatory, and because 37 CFR 1.183 does not empower the Commissioner to waive statutory requirements, <u>Brenner v. Ebbert</u>, <u>398 F.2d</u> 762, 764, 157 USPQ 609, 610 (D.C. Cir. 1968), the petition to waive the rules is dismissed.

This is **not** a final agency action within the meaning of 5 U.S.C. § 704. Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450 By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

Telephone inquiries related to this communication should be directed to the undersigned at (571) 272-4914.

Ramesh Krishnamurthy

Petitions Examiner
Office of Petitions



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Alexandria, VA 22313-1450
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ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005

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OFFICE OF PETITIONS

In re Application of

Hake et al.

Application No. 11/449,873

Filed: June 9, 2006

Attorney Docket No. 31760-328

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 7, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed May 27, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 28, 2010. A Notice of Abandonment was mailed February 2, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$810, and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

This application is being referred to Technology Center AU 1638 for appropriate action by the Examiner in the normal course of business on the reply received June 7, 2011.

Alicia Kelley-Collier Petitions Examiner Office of Petitions

cc: T. LING CHWANG

901 MAIN STREET, SUITE 6000

DALLAS, TX 75202



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

ALAN GUNSHOR 2035 FILBERT STREET #208 SAN FRANCISCO CA 94123

MAILED

SEP 07 2010

OFFICE OF PETITIONS

In re Application of Alan Gunshor et al

Application No. 11/449,885

Filed: June 9, 2006

For: RANKING MULTIMEDIA SEARCH

RESULTS BY RE-RANKING THE

RESULTS BASED ON SEARCH TERM.

GEO-SPATIAL, AND USER ACTIVITY

INTER-CONNECTIVITY SCORES

ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed June 24, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the nonfinal rejection mailed December 18, 2008.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (3).

As stated in the decision mailed April 20, 2010, the statement of delay is not acceptable. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

- (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
- (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
- (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
 - (3) An assignee as provided for under §3.71(b) of this chapter; or
- (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

The renewed petition and response is not proper because the renewed petition and response is signed by Russell Dewey on behalf of Alan Gunshor which is not proper. Both inventors must sign as stated in the decision mailed April 20, 2010. No power of attorney has been received to indicate that Russell Dewey can act on behalf of inventor Alan Gunshor or that Alan Gunshor can act on behalf of inventor Russell Dewey, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b).

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the

public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

Additionally, the matter regarding the wish to re-classify application number 11/471,305 as a "continuation in part" of application number 11/449,885, will be determined by the technology center.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:

Mail Stop PETITIONS

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

By internet:

EFS-Web

www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center

at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/ Karen Creasy Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

ALAN GUNSHOR 2035 FILBERT STREET #208 SAN FRANCISCO CA 94123

MAILED

DEC 03 2010

OFFICE OF PETITIONS

In re Application of

Alan Gunshor et al

Application No. 11/449,885

Filed: June 9, 2006

For: RANKING MULTIMEDIA SEARCH

RESULTS BY RE-RANKING THE

RESULTS BASED ON SEARCH TERM, GEO-SPATIAL, AND USER ACTIVITY

INTER-CONNECTIVITY SCORES

ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed October 4, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the nonfinal Office action mailed December 18, 2008.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1).

As stated in the decision mailed September 7, 2010, the response submitted on June 24, 2010, is not proper because the response is signed by Russell Dewey on behalf of Alan Gunshor which is not proper. Both inventors must sign as stated in the decision mailed September 7, 2010. No power of attorney has been received to indicate that Russell Dewey can act on behalf of inventor Alan Gunshor or that Alan Gunshor can act on behalf of inventor Russell Dewey, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b).

Petitioner's attention was directed to 37 CFR 1.33(b), which states:

- (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
- (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
- (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
- (3) An assignee as provided for under §3.71(b) of this chapter; or
- (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:

Mail Stop PETITIONS

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By hand:

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By fax:

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By internet:

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at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/ Karen Creasy Petitions Examiner Office of Petitions



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

	EU DIC DATE	FIRST MANAGED DIVISITION	ATTORNEY DOCKET NO.	CONFIDATATIONAL
APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNET DOCKET NO.	CONFIRMATION NO.
11/449,958	06/09/2006	Donavan Poulin	451320	7262
30955 LATHROP & G	7590 10/12/2010 GAGE LLP		EXAMINER	
4845 PEARL E			PHAN, THAI Q	
SUITE 201 BOULDER, CO	O 80301		ART UNIT	PAPER NUMBER
20022-1, 0			2128	
			NOTIFICATION DATE	DELIVERY MODE
			10/12/2010	FLECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent@lathropgage.com



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

LATHROP & GAGE LLP 4845 PEARL EAST CIRCLE SUITE 201 BOULDER CO 80301

In re Application of: Donavan Poulin

Appl. No.: 11/449,958 Filed: June 9, 2006

Attorney Docket: 451320

For: SYSTEM AND METHOD FOR DEVELOPING AN APPLICATION PLAYING ON A MOBILE DEVICE

EMULATED ON A PERSONAL COMPUTER

DECISION ON PETITION . UNDER 37 CFR § 1.59

This is a decision on the petition under 37 CFR § 1.59(b), filed on October 1, 2010 (re-filed October 4, 2010) to expunge documents from the record, filed by Donavan Poulin, the sole inventor in the application.

The petition is **DENIED**.

In the petition filed October 1, 2010 Mr. Poulin requests that a document entitled 11-21-2008 NPL Documents (pages 77 and 78 of the Patent file Wrapper) be expunged from the record. Petitioner states that either (A) the information contains trade secret material, proprietary material, and/or material that is subject to a protective order which has not been otherwise made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted and that the information has not otherwise been made public.

The petition fee set forth in 37 CFR § 1.17(g) has been paid.

DECISION

The relevant sections of MPEP state in part:

§ 1.59 Expungement of information or copy of papers in application file.

Serial No.: 11/489,958	-2 -
Decision on Petition	

(a)

(1) Information in an application will not be expunged, except as provided in paragraph (b) of this section or § 41.7(a) of this title.

(b) An applicant may request that the Office expunge information, other than what is excluded by paragraph (a)(2) of this section, by filing a petition under this paragraph. Any petition to expunge information from an application must include the fee set forth in § 1.17(g) and establish to the satisfaction of the Director that the expungement of the information is appropriate in which case a notice granting the petition for expungement will be provided.

§724.05 Petition To Expunge Information or Copy of Papers in Application File [R-6]

I. INFORMATION SUBMITTED UNDER MPEP § 724.02

A petition under 37 CFR 1.59(b) to expunge information submitted under MPEP § 724.02, or that should have been submitted under MPEP § 724.02 (as where proprietary information is submitted in an information disclosure statement but inadvertently not submitted in a sealed envelope as discussed in MPEP § 724.02) will be entertained only if the petition fee (37 CFR 1.17(g)) is filed and the information has been found *not* to be **>material to< patentability.

Such petition must contain:

- (A) a clear identification of the information to be expunged without disclosure of the details thereof;
- (B) a clear statement that the information to be expunged is trade secret material, proprietary material, and/or subject to a protective order, and that the information has not been otherwise made public;
- (C) a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted;
- (D) a statement that the petition to expunge is being submitted by, or on behalf of, the party in interest who originally submitted the information;

Any such petition to expunge should accompany the submission of the information and, in any event, must be submitted in sufficient time that it can be acted on prior to the mailing of a notice of allowability

Timely submission of the petition is, accordingly, extremely important.

••

Serial No.: 11/489,958 Decision on Petition

If the petition does not accompany the information when it is initially submitted, the petition should be submitted while the application or reexamination is pending in the Technology Center (TC) and before it is transmitted to the Publishing Division. If a petition to expunge is not filed prior to the mailing of a notice of allowability or a notice of abandonment for original and reissue applications, any material then in the file will remain therein and be open to the public in accordance with 37 CFR 1.14. Accordingly, it is important that both the submission of any material under MPEP § 724.02 and the submission of any petition to expunge occur as early as possible during the examination process.

•••

The petition does not comply with the requirements of MPEP §724.05, as it does not contain a clear identification of the information or documents to be expunged. Specifically, Applicant identifies the document to be expunged as a "document entitled 11-21-2008 NPL Documents (pages 77 and 78 of the Patent file Wrapper)". Although Applicant attaches two pages of a document with the petition filed October 1, 2010, the petition fails to *clearly* identify the document within the file wrapper record maintained at the Office, since documents within the records at the Patent and Trademark Office are not identifiable by page numbers. In addition, the petition is not timely as required by MPEP §724.05 (I), since it was filed after a Notice of allowability has been mailed by the Office and after the application was transmitted to the Publishing Derision. As noted in the Petition, the Petition was filed only 11 days before the due date of publication of the Patent (October 12, 2010), therefore the petition was not submitted in sufficient time that it can be acted on prior to the mailing of a notice of allowability, as required by MPEP §724.05 (I). Further, the petition does not contain a *clear* statement that the information to be expunged is trade secret material, proprietary material, and/or subject to a protective order, and that the information has not been otherwise made public. It is noted that this statement was included in the petition only as an alternative to a statement referred to as a statement (B) in the petition. Thus the petition does not include a clear statement required by MPEP §724.05 (I) (B). Finally, the petition does not include the statements required by MPEP §724.05 (I) (C) and (D) above.

For the above reasons, the petition is **DENIED**.

This correspondence is being directed to the Correspondence address of record, in accordance with 37 CFR §1.33 (a). Applicant is reminded of the requirements regarding Correspondence respecting patent applications as set forth in 37 CFR §1.33.

Any inquiry concerning this decision should be directed to Kakali Chaki, Quality Assurance Specialist, at (571) 272-3719.

Wendy Garber,

Director, Technology Center 2100

	Paper No
DATE : 11/7/11	
TO SPE OF : ART UNIT: 28	314
SUBJECT : Request for Cor	rtificate of Correction for Appl. No.: 11/450.030 Patent No. 7,957,547
	CofC mailroom date 10/31/11
Please respond to this req	quest for a certificate of correction within 7 days.
FOR IFW FILES:	
Please review the request the IFW application image meaning of the claims be	ted changes/corrections as shown in the COCIN document(s) in e. No new matter should be introduced, nor should the scope or changed.
Please complete the responsing document code CO	onse (see below) and forward the completed response to scanning CX.
FOR PAPER FILES:	
Please review the request correction. Please comple	ted changes/corrections as shown in the attached certificate of ete this form (see below) and forward it with the file to:
Certificates of Cor Randolph Square Palm Location 758	
	Ernest C. White, LIE
•	Certificates of Correction Branch
	703-756-1814
Thank You For Your Ass	sistance
The request for issuing Note your decision on the appropriate	the above-identified correction(s) is hereby:
Approved	All changes apply.
, □ Approved i	n Part Specify below which changes do not apply.
☐ Denied	State the reasons for denial below.
Comments:	
-	



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
. 11/450,072	06/09/2006	Nicolas Aeby	4043.06US01	8171	
PATTERSON THUENTE CHRISTENSEN PEDERSEN, P.A. 4800 DES CENTER			EXAMINER		
			FARAH, AHMED M		
80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402-2100		ART UNIT	PAPER NUMBER		
	,		3769	, .	
•			MAIL DATE	DELIVERY MODE	
			02/14/2011	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspio.gov

PATTERSON THUENTE CHRISTENSEN PEDERSEN, P.A. 4800 IDS CENTER 80 SOUTH 8TH STREET MINNEAPOLIS MN 55402-2100

In re Application of: AEBY, NICOLAS et al Serial No. 11/450,072 Filed: June 9, 2006

Docket: 4034.06US01

Title:

CATHETER HAVING TRI-AXIAL

FORCE SENSOR

DECISION ON PETITION UNDER 37 CFR 1.59

This is a decision on the petition and request under 37 CFR 1.59(b) filed on December 15, 2010 to expunge information from the above identified application. Pursuant to a telephone conversation with Mr. Stuart Olstad on February 9, 2011, the petition fee of \$200.00 set forth in 37 CFR 1.17(g) was charged to the Deposit Account No. 16-0631.

In the petition, the petitioner states that an NPL document (total of 218 pages) submitted on November 10, 2010 was filed unintentionally. Petitioner requests removal of the erroneously filed NPL document.

The petition is granted.

The USPTO does not remove any papers filed in an application. However, since the applicant has unintentionally filed the wrong document on November 10, 2010, the 219 pages of the NPL document has been blocked from public view in the Public Pair system.

Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION GRANTED

Angela D. Sykes, Director Technology Center 3700



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MCDERMOTT, WILL & EMERY LLP Attn: IP Department 227 WEST MONROE STREET SUITE 4400 CHICAGO IL 60606-5096

MAILED

AUG 2 7 2010

OFFICE OF PETITIONS

In re Application of

Scanlan, et al.

Application No. 11/450,116

DECISION ON PETITION

Filed: J

June 9, 2006

Attorney Docket No. 081573-0017000

This is a decision on the renewed petition under 37 CFR 1.137(b), filed July 16, 2010.

The renewed petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 31, 2009, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on December 1, 2009. A Notice of Abandonment was mailed March 29, 2010.

The amendment filed May 24, 2010, is noted.

The application is being forwarded to Technology Center 2800, GAU 2861 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.usplo.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/450,196	06/09/2006	Ting-Hsien Wang	7257/76505	7918
23432 COOPER & D	23432 7590 11/18/2010 COOPER & DUNHAM, LLP		EXAMINER	
30 Rockefeller	Plaza		SULLIVAN, MATTHEW J	
20th Floor NEW YORK, NY 10112			ART UNIT	PAPER NUMBER
			3677	
				· · · · · · · · · · · · · · · · · · ·
			MAIL DATE	DELIVERY MODE
			11/18/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA. VA 22313-1450
www.uspto.gov

COOPER & DUNHAM, LLP 30 Rockefeller Plaza 20th Floor NEW YORK, NY 10112

In re Patent No. 7,520,024

Issue Date: April 21, 2009

Appl. No.: 11/450,196 Filed: June 09, 2006

For: HINGE ASSEMBLY

DECISION DISMISSING

PETITION

37 CFR 1.324

This is a decision on the petition filed October 20, 2010 to correct inventorship under 37 CFR 1.324.

The petition is **dismissed**.

A petition to correct inventorship as provided by 37 CFR 1.324 requires (1) a statement from each person who is being added as an inventor that the inventorship error occurred without any deceptive intention on their part, (2) a statement from the current named inventors (including any "inventor" being deleted) who have not submitted a statement as per "(1)" either agreeing to the change of inventorship or stating that they have no disagreement in regard to the requested change, (3) a statement from all assignees of the parties submitting a statement under "(1)" and "(2)" agreeing to the change of inventorship in the patent; such statement must comply with the requirements of 37 CFR 3.73(b); and (4) the fee set forth in 37 CFR 1.20(b). This petition lacks item (3).

Specifically the Statement under 37 CFR 3.73(b) lacks a statement or does not specify that the assignee is the entire right, title and interest; or is an assignee of less than the entire right, title and interest. Furthermore, the complete chain of title from the inventors to the current assignee is not provided on the 37 CFR 3.73(b) statement submitted.

David J. Bagnell

Supervisory Patent Examiner

Art Unit 3672

Patent Examining Group 3600

DJB: 11/17/10



COMMISSIONER FOR PATENTS UNITED STATES PATENT AND TRADEMARK OFFICE P.O. Box 1450

ALEXANDRIA, VA 22313-1450

JAN 0 6 2011

BEYER LAW GROUP LLP P.O. BOX 1687 CUPERTINO, CA 95015-1687

In re Patent No. WANG, TING-HSIEN

Issue Date: April 21, 2009 Appl No.: 11/450,196 Filed: June 09, 2006

For: HINGE ASSEMBLY

DECISION GRANTING

PETITION 37 CFR 1.324

This is a decision on the renewed petition filed November 24, 2010 to correct inventorship under 37 CFR 1.324.

The petition is granted.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

David J. Barnell

Supervisory Patent Examiner

Art Unit 3672

Technology Center 3600



COMMISSIONER FOR PATENTS.
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.usplo.gov

DATE:

January 6, 2011

TO:

Certificates of Correction Branch

FROM:

David J. Bagnell

SPE, Art Unit 3672

SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 7,520,024 as specified on the attached Certificate.

David J. Bagnell, SPE

Art Unit 3672

CERTIFICATE

Patent No. 7,520,024 Patented: April 21, 2009

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Brett William Degner

John P. Ternus Andrew Lauder Menlo Park, CA Redwood City, CA San Francisco, CA

David J. Bagnell

Supervisory Patent Examiner

Art Unit 3672



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

J.E. McTaggart U.S. Patent Agent 6650 Crescent Street Suite 4 VENTURA, CA 93003

MAILED

AUG 2 6 2010

OFFICE OF PETITIONS

In re Application of Wilsey

Application No. 11/450,256 : Decision

Filing Date: June 12, 2006

Attorney Docket No. 1480

Decision on Petition

This is a decision on the petition under 37 C.F.R. § 1.137(a), filed July 14, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. § 1.137(a)."

Facts

The inventor is Richard M. Wilsey and the Patent Agent of record is J.E. McTaggart.

The Office mailed a non-final Office action on May 28, 2009.

Wilsey's statement filed with the prior petition to revive filed February 4, 2010, stated, as of the date McTaggart informed him the Office had mailed a non-final Office action, Wilsey "had become discouraged about the prospects of being able to commercialize the invention." Wilsey states he "expressed [his] uncertainty ... about [the] matter in terms of business viability."

McTaggart voluntarily prepared a response to the Office action while deferring any charges for such action. As a result, a reply was filed June 26, 2009.

The examiner and McTaggart participated in a telephonic interview on August 24, 2009. The Office mailed an interview summary form on September 8, 2009. The form stated in part, "Applicant agreed to submit corrected drawings."

Corrected drawings were filed by facsimile transmission on August 31, 2009.

The examiner mailed a Notice of Allowance and a Notice of Allowability on September 8, 2009.

The Notice of Allowance required the submission of \$755 for the issue fee.

The Notice of Allowability required the submission of corrected drawings.

Wilsey is an owner of a plumbing and drain cleaning business. Wilsey's statement filed with the prior petition stated,

[U]nfortunately due to marked increase in start-up companies and hourly tradesman now competing for work, especially during the Holiday Season along with the pressure to meet overdue accounts payable[,] the patent payment was unavoidably delayed....

[B]usiness has been improving since the New Year....

I have found renewed interest in the invention and have regained some hope for its success, therefore I now wish to overcome the abandonment.... [The payment of the required fees is] being submitted under a financial agreement that has been worked out between myself and the patent agent.

A petition under 37 C.F.R. § 1.137(a) was filed February 4, 2010.

The Office mailed a decision dismissing the petition on June 14, 2010.

The instant petition was filed July 14, 2010.

The instant petition indicates Wilsey's income increased during January 2010. The petition states, "Regaining some confidence that the worst may have moved into the past, Mr. Wilsey sought revival of the allowed application." The petition also states, near the end of January 2010, "with some hope of an economic recovery, Mr. Wilsey ... agreed with the agent's recommendation to seek revival of the application."

The information supplied with the petition indicates, during the time period from October 1, 2009, to January 1, 2010:

- 1. Wilsey's business had a gross income of \$34,747.50;
- 2. Wilsey's business spent a total of \$1,024.33 on advertising during the time period;
- 3. Wilsey's business spent \$956.73 on Office supplies;
- 4. Wilsey's business spent \$521.75 on tools;
- 5. Wilsey's business spent \$2,039.13 on employee benefits;
- 6. Wilsey's business had a net profit of \$9,115.79;
- 7. Wilsey's family income was \$15,034.40 (\$5,919.61 wages + \$9,115.79 business profit);
- 8. Wilsey's monthly budget included a \$2,840.36 mortgage payment, \$250 for medical expenses (diabetic), \$650 for health insurance, and \$450 for credit card payments.

Law

35 U.S.C. § 133 states,

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account." In general, on order to prove unavoidable delay, a party must prove the party exercised the same level of "care or diligence tha[t] is generally used and observed by prudent and careful men in relation to their most important business."²

Discussion

A grantable petition under 37 C.F.R. § 1.137(a) must be accompanied by a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable.

The current record is insufficient to demonstrate the entire delay in filing the issue fee was unavoidable.

The petition raises a hypothetical question. Specifically, the petition states,

[F]aced with a choice between [a business expense] with a 30% of yielding some benefit in ... 3 months versus funding a patent with [a] 3% of yielding some benefit in ... 3 years, which would the prudent and careful business man choose?

If the test for unavoidable delay was whether or not a party acted reasonably and prudently, the record might be sufficient to demonstrate unavoidable delay. However, a party must demonstrate the party treated the matter at issue the same as the party as would treat the party's most important business in order to establish unavoidable delay.

Absent the "most important business" requirement, a party could intentionally fail to pay a fee and allow an application to become abandoned because the party reasonably and prudently believed that the application was worthless, and later upon discovering the application was commercially viable, revive the application under the unavoidable standard. In other words, the

¹ Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (1982).

² In re Mattulath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912). See also Ray v. Lehman, 55 F.3d 606, 34 U.S.P.Q.2d (BNA) 1786 (Fed. Cir. 1995) (citations omitted) ("[I]n determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person.")

party would be able to show the delay was unavoidable even though the delay was not unintentional. When Congress created the unintentional standard, Congress indicated that such a standard was to be the *lesser* standard. The Office will not adopt any interpretation of the term "unavoidable" resulting in some intentional delays being considered unavoidable delays. Therefore, a showing of unavoidable delay based on financial difficulty must establish the party wished to pay the fee(s) at issue, but was unable to pay the fee(s).

The prior decision stated, with emphasis added, "[Any renewed petition] should discuss Wiley's income, expenses, assets, credit and obligations, during the [relevant] time period." The instant petition does not include any discussion of Wiley's assets, which include the business's assets. As a result, the Office is unable to accurately assess Wiley's financial situation during the relevant time period. Therefore, the petition cannot be granted. Any renewed petition should discuss Wiley's "major" assets during the relevant time period. Specifically, the renewed petition should include enough information to allow the Office to determine the extent to which Wiley had, or did not have, any equity in items such as home, land, cars, trucks, etc. The renewed petition should also identify any assets purchased for more than \$500 by Wilsey or Wilsey's business during the fourth quarter of 2009.

Even if the showing of record demonstrated none of the assets owned by Wiley, including assets owned by his business, support a conclusion Wiley was able to pay the fee, the record would be insufficient to demonstrate unavoidable delay because the record fails to establish Wilsey's alleged inability to pay the fee was not the result of Wilsey giving priority to other expenses.

The Office does not assert Wilsey was required to give payment of the issue fee priority over payment of *all* business-related expenses. However, Wilsey was required to give the payment of the \$755 issue fee, and the payment of the issue fee and the \$270 petition fee (total \$1,025) after the application became abandoned, priority over discretionary business-related expenses.

During the fourth quarter of 2009, Wilsey's business spent:

- 1. An average of \$341.44 per month on advertising,
- 2. An average of \$318.91 per month on Office supplies, and
- 3. An average of \$174.92 per month on tools.

The petition fails to establish no portion of the business-related expenses listed above could have been deferred in order to timely pay the issue fee or to file a petition to revive the application on an earlier date. Therefore, the showing of record is insufficient to establish petitioner was unable to pay the maintenance fee.

The fourth quarter budget for the business indicates \$629.00 was spent on "other" expenses related to automobiles. Any request for reconsideration should identify the exact nature of the "other expenses."

The business paid \$2,039.13 in employee benefits during the fourth quarter of 2009. Any renewed petition should indicate the extent to which this sum includes payments for health insurance for Wilsey and/or other members of his family.

As previously stated, when Congress created the unintentional standard, Congress indicated that such a standard was to be the *lesser* standard. Therefore, a delay cannot be unavoidable unless the delay is also unintentional. In this case, the record fails to demonstrate the delay was unintentional.

Wilsey's statement filed with the prior petition stated, with emphasis added,

I have found renewed interest in the invention and have regained some hope for its success, therefore I now wish to overcome the abandonment.... [The payment of the required fees is] being submitted under a financial agreement that has been worked out between myself and the patent agent.

The use of the word "therefore" in the language quoted above indicates the petition to revive was the result of Wilsey finding "renewed interest in the invention" and regaining hope the application will be successful. If Wilsey's choice to revive the application was the result of a reassessment of the value of the application, then Wilsey's delay in payment of the issue fee will not be unintentional delay.

Although the renewed petition focuses on an improvement in Wilsey's business as the driving force behind Wilsey's desire to revive the application, the facts of record are insufficient to establish a reassessment of the application's value was not a "but for" cause of the filing of a petition to revive.

Any renewed petition under 37 C.F.R. § 1.137(a) or petition under 37 C.F.R. § 1.137(b) should include a statement by Wilsey:

- (1) Identifying the date "renewed interest" was shown in the application,
- (2) Fully discussing the form of the renewed interest,
- (3) Identifying the date Wilsey first contacted McTaggart concerning reviving the application, and
- (4) Fully discuss the extent to which Wilsey's perceived value of the application played a role in Wilsey allowing the application to become abandoned, and
- (5) Fully discuss the extent to which Wilsey's perceived value of the application played a role in Wilsey contacting McTaggart concerning revival of the application.

Petitioner should note, if petitioner does not wish to further pursue revival of the application after further inquiry into the facts, Petitioner may request a refund of the \$755 issue fee paid February 4, 2010.

Unless filed by EFS Web, further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

By facsimile: (571) 273-8300

Attn: Office of Petitions

By hand:

U.S. Patent and Trademark Office

Customer Service Window

Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley Senior Petitions Attorney

Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
WWW.USPTO.GOV

J.E. MCTAGGART
U.S. PATENT AGENT
6650 CRESCENT STREET
SUITE 4
VENTURA CA 93003

MAILED

FFB 1 4 2011

OFFICE OF PETITIONS

In re Application of

Richard W. WILSEY

Application No. 11/450,256

Filed: June 12, 2006

Attorney Docket No. 1480

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 30, 2010, to revive the above-identified application.

The petition is GRANTED.

This application became abandoned for failure to: (a) timely pay the issue fee and (b) submit corrected drawings, on or before December 08, 2009, as required by the Notice of Allowance and Fee(s) Due, mailed September 08, 2009. Accordingly, the date of abandonment of this application is December 09, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of \$755, and corrected drawings (2) the petition fee of \$810; and (3) a proper statement of unintentional delay. Accordingly, the reply is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to the Office of Data Management for processing into a patent.

Ramesh Krishnamurthy

Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Paper No.

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY & POPEO, P.C. ONE FINANCIAL CENTER BOSTON MA 02111

MAILED

JUN 2 1 2011

OFFICE OF PETITIONS

In re Application of :

Aakolk et al. : DECISION ON PETITION

Application No. 11/450,261 : Filed: June 12, 2006 : Atty Docket No. 34874-219 :

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed May 18, 2011.

The petition is GRANTED.

The above-identified application became abandoned for failure to reply to the Notice to File Corrected Application Papers mailed March 9, 2011. The Notice set a time limit for reply of one (1) month from the mail date of the Notice. This period was extendable under 37 CFR 1.136(a). No reply filed and no extension obtained, the above-identified application became abandoned on April 10, 2011. A courtesy Notice of Abandonment was mailed on May 9, 2011.

Petitioner has satisfied the requirements of 37 CFR 1.137(b). The petition includes the required reply in the form of an application data sheet; the petition fee; and the required statement of unintentional delay.

The Office of Data Management has been advised of this decision. The application is thereby forwarded for processing of the response to the Notice to File Corrected Application Papers and processing into a patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson Senior Petitions Attorney

Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.

MAILED

1300 19TH STREET, N.W. SUITE 600

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WASHINGTON, DC 20036

OFFICE OF PETITIONS

In re Application of

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: DECISION ON PETITION

Application No. 11/450,407

Filed: June 12, 2006

Atty. Dkt. No: 50573

This decision is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed December 2, 2011.

The application was held abandoned for failure to timely submit a proper reply to the final Office action mailed March 30, 2011. Notice of Abandonment was mailed October 25, 2011.

Petitioners request withdrawal of the holding of abandonment of the instant application on the basis of non-receipt of the Office communication.

The showing required to establish non-receipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response. Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the non-received Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. See, MPEP 711.03(c).

The instant petition and supporting documents have been carefully review and found in compliance with the requirements for establishing non-receipt of an Office communication.

In view thereof, the petition is hereby <u>GRANTED</u>. The holding of abandonment is withdrawn and the Notice of Abandonment is vacated.

This application is being directed to Group Art Unit 2439 for re-mailing of the final Office action. The newly mailed final Office action will set a new period of time for reply.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown Attorney Advisor Office of Petitions

SPE	RESPONSE FOR C			
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DATE : 5-29-0	18			
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PTOL 305 (REV. 7/03)



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/02/2010

CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300

Applicant : Joachim Ripperger
Patent Number : 7649154
Issue Data Issue Date : 01/19/2010

Application No: 11/450,438 Filed : 06/12/2006 : DECISION ON REQUEST FOR : RECALCULATION of PATENT

: TERM ADJUSTMENT IN VIEW

: OF WYETH AND NOTICE OF INTENT TO

: ISSUE CERTIFICATE OF CORRECTION

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 378 days. The USPTO will sua sponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

SULLIVAN & WORCESTER LLP 1666 K Street NW Washington DC 20006 MAILED NOV 12 2010

OFFICE OF PETITIONS

In re Application of

Joe V. Travez et al. Application No. 11/450,444

Filed: June 12, 2006

Attorney Docket No. 22232.0013

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 20, 2010.

The request is APPROVED.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by John W. Ryan on behalf of all attorneys/agents associated with customer number 44966. All attorneys/agents associated with customer number 44966 have been withdrawn.

The correspondence address has been changed and is copied below.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at 571-272-4618.

/Kimberly Inabinet/

Kimberly Inabinet Petitions Examiner Office of Petitions

cc: Prototype Productions, Inc. 21641 Beaumeade Circle Suite 311 Ashburn, VA 20147



44966

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NUMBER

1666 K Street NW Washington, DC 20006

FILING OR 371(C) DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

11/450,444

SULLIVAN & WORCESTER LLP

06/12/2006

Joe V. Travez

22232.0013

CONFIRMATION NO. 7962 POWER OF ATTORNEY NOTICE

CC00000044427660

Date Mailed: 11/09/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/20/2010.

• The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record, 37 CFR 1.33.

/kainabinet/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101



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RAYMOND SUN 12420 Woodhall Way Tustin CA 92782 MAILED
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OFFICE OF PETITIONS

In re Application of

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: DECISION ON PETITION

Application No. 11/450,469

Filed: June 12, 2006

Atty. Dkt. No.: ING.061

This decision is in response to the petition under 37 CFR 1.137(b), filed September 14, 2011.

The petition is **GRANTED**.

The application became abandoned April 17, 2010 for failure to timely submit a proper reply to the Notice of Non-Compliant Amendment (Notice) mailed March 16, 2010. The Notice set a one month shortened statutory period of time for reply. No petition for extension of time under 37 CFR 1.136(a) was timely filed. Notice of Abandonment was mailed November 9, 2010.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been carefully reviewed and found in compliance with the requirements set forth above.

This application is being forwarded to Group Art Unit 2442 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown Attorney Advisor Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

MOORE PATENTS 794 LOS ROBLES AVENUE PALO ALTO, CA 94306-3159

MAILED

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In re Application of Jasim Seleh Al-Azzawi Application No. 11/450,476 Filed: June 12, 2006

OFFICE OF PETITIONS
ON PETITION

Filed: June 12, 2006 Attorney Docket No. N/A

This is a decision on the petition under 37 CFR 1.137(b) filed January 16, 2011, requesting to revive the above-identified application.

In response to the decision mailed on February 18, 2010, petitioner submits the present petition along with the petition fee of \$810.

Since the petition complies with the requirements of 37 CFR 1.137(b), the petition is hereby **GRANTED**.

Additionally, it is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

This application file is being referred to the Office of Patent Application Processing for further processing in accordance with this decision.

elephone inquiries concerning this decision should be directed to the undersigned at

(571) 272-32**2**6.

Andrea/Smith
Petitions Examiner
Office of Petition



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

WOODCOCK WASHBURN LLP (MICROSOFT CORPORATION)
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA, PA 19104-2891

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OFFICE OF PETITIONS

In re Application of

Ulfar ERLINGSSON, et al.

Application No. 11/450,493

Filed: June 9, 2006

Attorney Docket No. MSFT-5522/315397.01

DECISION GRANTING PETITION

UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed May 23, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

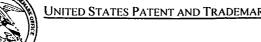
Petitioner is advised that the issue fee paid on April 21, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 2193 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.



Commissioner for Pa United States Patent and Trac Alexandria, V

STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. **WASHINGTON DC 20005**

MAILED

JAN 09 2012

OFFICE OF PETITIONS

In re Application of

Sumio Watanabe et al. Application No. 11/450,551

Filed: June 12, 2006

Attorney Docket No: 2018.1033

ON PETITION

This is a decision on the petition to withdraw the holding of abandonment, filed December 29, 2011, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513, which is being treated under 37 CFR 1.181.

The petition is **GRANTED**.

This application became abandoned for failure to file a timely response to the Final Office Action mailed April 13, 2011, which set a three (3) month statutory period for reply. Accordingly, a Notice of Abandonment was mailed December 13, 2011. Petitioner asserts that the Office Action was never received.

The file record discloses that the Office Action was mailed to the address of record which is the same address previously used on all correspondences from the USPTO, including the Notice of Abandonment which was received. Petitioner has provided a copy of the docket to show that the Office Action mailed April 13, 2011 was not received. Petitioner also explains that after searching the file and docket records, where receipt of the office action would have been indicated if it had been received, it was concluded that no correspondence was received for this matter from the USPTO.

In that the statement from the petitioner and the exhibit from the docket record for the instant matter show no entry indicating receipt of the Office Action mailed April 13, 2011, it is apparent that it was not received. The evidence submitted corroborates nonreceipt of the Office Action.

In view of the facts set forth in the petition, it is concluded that the Office Action was never received at the address of record. Accordingly, the holding of abandonment is withdrawn and no petition fee is due.

This matter is being referred to Technology Center 2854 for a re-mailing of the Final Office Action and for a restarting of the period for response.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Senior Petitions Attorney

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE



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STEMEDICA CELL TECHNOLOGIES, INC 5375 MIRA SORRENTO PLACE. SUITE 100 SAN DIEGO, CA 92121

MAILED

AUG 26 2011

OFFICE OF PETITIONS

In re Application of Andrey Vasiliev, et al. Application No. 11/450,625

Filed: June 8, 2006

Attorney Docket No. STEM-19US

DECISION ON PETITION

This is a decision on the petition, filed July 26, 2011, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the aboveidentified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action of May 26, 2010, which set a one (1) month or thirty (30) day (which ever is longer) shortened statutory period for reply. Accordingly, a reply was due on or before June 26, 2010.

Petitioner states that a timely reply was mailed via certificate of mailing on November 23, 2010, which included the following papers: request for a five (5) month extension of time and an election. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated November 23, 2010, which would have rendered the reply timely if received. The file record does include the originally submitted papers.

The petition satisfies the requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of May 26, 2010 is hereby withdrawn and the application restored to pending status.

Telephone inquiries concerning this decision should be directed to April M. Wise at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1619 for appropriate action in the normal course of business on the reply received with petition.

/Carl Friedman/ Carl Friedman Petitions Examiner Office of Petitions

	SPE RESPONSE	FOR CERTIFICATE OF CORRECTION
	. 1 ,	Paper No∴
DATE	10/25/10	^
TO SPE OF	: ART UNIT _ 2812	GARber Charles (Spe)
SUBJECT	: Request for Certificate of Corr	ection for Appl. No.: 11/450661 Patent No.: 75/77
Please respo	and to this request for a co	ertificate of correction within 7 days.
FOR IFW FII	<u>ES</u> :	
the IFW app		/corrections as shown in the COCIN document(s) in natter should be introduced, nor should the scope or
	lete the response (see been code COCX.	elow) and forward the completed response to scanning
FOR PAPER	R FILES:	The First Correction only Item Is
		/corrections as shown in the attached certificate of (see below) and forward it with the file to:
Rand	icates of Correction Bra olph Square – 9D40-A Location 7580	inch (CofC)
	·	Certificates of Correction Branch
		703-756-1571
Thank You	For Your Assistance	
		dentified correction(s) is hereby:
Note your decision	Approved	All changes apply.
. 💆	Approved in Part	Specify below which changes do not apply.
	• •	Specify below which changes do not apply. State the reasons for denial below.
	Approved in Part Denied	State the reasons for denial below.
	Approved in Part Denied	

PTOL-306 (REV. 7/03)

SPE Art Unit
U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE



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Douglas J. Hura, Esquire DENTSPLY International Inc. 570 West College Avenue P.O. Box 872 York PA 17405-0872

MAILED

AUG 02 2010

OFFICE OF PETITIONS

In re Application of Paul Richardson Pierson Application No. 11/450,782

Filed: June 9, 2006

Attorney Docket No. LDC-922-1A-CON3

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 14, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, December 9, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 10, 2009. The Notice of Abandonment was mailed July 14, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$1,620, and (3) a proper statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1,110 extension of time fee submitted with the petition on July 14, 2010 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 3754 for appropriate action by the Examiner in the normal course of business on the reply received.

Terri Johnson

Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

VOLENTINE & WHITT PLLC ONE FREEDOM SQUARE 11951 FREEDOM DRIVE SUITE 1260 RESTON VA 20190

In re Application of

Ilnicki, et al.

Application No. 11/450,805

Filed: June 8, 2006

Attorney Docket No. 49-94 US

MAILED

FEB 1 5 2011

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 23, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a proper response to the final Office action mailed July 15, 2009. The final Office action set a shortened statutory period for reply of three months from its mailing date. A response was not received within the allowable period and the application became abandoned on October 16, 2009. A Notice of Abandonment was mailed March 8, 2010.

The Request for Continued Examination and amendment filed December 23, 2010, are noted.

The application file is being forwarded to Technology Center 2400, GAU 2475 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

	0. 2	52.11.11.157.12.51.51.
		Paper No .:20110610
DATE	: March 22, 2010	
TO SPE	OF: ART UNIT 1761	
SUBJEC	T : Request for Certificate of Correct	ction on Patent No.: 11/450,843
A response	e is requested with respect to the accomp	panying request for a certificate of correction.
Certificat	omplete this form and return with file, values of Correction Branch - ST (Sout ation 7590 - Tel. No. (703) 305-8309	
read as sh		g Office and/or Applicant's errors, should the patent new matter should be introduced, nor should the scope or
Thank Yo	ou For Your Assistance	Certificates of Correction Branch
•	est for issuing the above-identified ision on the appropriated box.	l correction(s) is hereby:
	Approved	All changes apply.
	Approved in Part	Specify below which changes do not apply.
	Denied	State the reasons for denial below.
In	Cloumn 6, line 61, replace the words Column 8, line 18, replace the word "ENTER: New claim 12.	
		pervisory Patent Examiner.Art Unit 1761



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 09/14/2010

INTEL CORPORATION c/o CPA Global P.O. BOX 52050 MINNEAPOLIS, MN 55402

Applicant : Vincent J. Zimmer

: DECISION ON REQUEST FOR Patent Number: 7660977 : RECALCULATION of PATENT Issue Date : 02/09/2010 : TERM ADJUSTMENT IN VIEW

Application No: 11/450,854 : OF WYETH AND NOTICE OF INTENT TO Filed : 06/08/2006 : ISSUE CERTIFICATE OF CORRECTION

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 572 days. The USPTO will sua sponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



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GENOMIC HEALTH, INC. C/O KATHLEEN DETERMANN 301 PENOBSCOT ROAD REDWOOD CITY, CA 94063

MAILED

AUG 1 6 2010

OFFICE OF PETITIONS

In re Application of Baker, et al.

Application No. 11/450,896

Filed: 9 June, 2006

Attorney Docket No. 39740-0001C2

DECISION ON PETITION

This is a decision on the petition filed on 5 August, 2010, requesting pursuant to the regulations at 37 C.F.R §1.182 that the acceptance of the terminal disclaimer originally filed herein on 30 September, 2009, be withdrawn

NOTE:

For the third time Petitioner filed in this matter a petition to withdraw this terminal disclaimer (TD) averred to have been erroneously filed.

Petitioner further filed on 27 July, 2010, a CREATE Act TD which Petitioner submitted to replace the 15 September, 2009, TD, which earlier paper Petitioner asserted was incorrect.

On 5 August, 2010, the Examiner mailed a Summary of a 4 August, 2010, Interview, in which the Examiner:

- Acknowledged the submission of the 27 July, 2010, TD, and indicated that, were that latter TD accepted, the 15 September, 2009, TD could be withdrawn without reinstatement of the double-patenting objection; and
- Noted, however, at that conversation and writing the Office had not yet accepted the 27 July, 2010, TD.

On 5 August, 2010, the Office approved/accepted the 27 July, 2010, TD.

The petition pursuant to 37 C.F.R §1.182 is GRANTED.

BACKGROUND

On 15 January, 2010, Petitioner filed a petition pursuant to the regulations at 37 C.F.R §1.182 that the acceptance of the terminal disclaimer (TD) originally filed herein on 30 September, 2009, be withdrawn. Petitioner averred that the original averment of the TD of common ownership was incorrect. For several reasons already of record, the petition was dismissed on 29 March, 2010.²

On 29 April, 2010, Petitioner re-advanced his petition,³ and sought to negotiate with the Office by indicating that if the Office permitted withdrawal of the 30 September, 2010, TD, Petitioner would file a replacement TD. The Office chose not to negotiate with Petitioner, and dismissed the petition on 14 July, 2010.

Petitioner, it appears, then telephoned the Office on or about 26 July, 2010, but received no agreement to permit withdrawal of the 30 September, 2010, TD in the absence of a replacement TD filed of record.

Thereafter:

- On 27 July, 2010, Petitioner filed a CREATE Act TD with which Petitioner sought to replace the 15 September, 2009, TD, which earlier paper Petitioner asserted was incorrect.
- On 5 August, 2010, the Examiner mailed a Summary of a 4 August, 2010, Interview, in which the Examiner:
 - —Acknowledged the submission of the 27 July, 2010, TD, and indicated that, were that latter TD accepted, the 30 September, 2009, TD could be withdrawn without reinstatement of the double-patenting objection; and
 - —Noted, however, at that conversation and writing the Office had not yet accepted the 27 July, 2010, TD.
- On 5 August, 2010, the Office approved/accepted the 27 July, 2010, TD.

In the first petition, Petitioner averred that amendments made in the application obviated the necessity for the terminal disclaimer filed in the instant application on 30 September, 2009, as to Patent No. 7,526,387 (Application No. 10/883,303).

² All the while Petitioner averred to statements and understandings between Petitioner and the Examiner not of record—which averment Petitioner, as one registered to practice before the Office, is aware is not proper: All practice before the Office is in writing (see: 37 C.F.R. §1.2²) and the proper authority for action on any matter are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

On second petition Petitioner asserted that his representations to the Office on submission of the 30 September, 2009, TD were in error, and his representations to the Office on the first petition also were in error, and that the actual reason is that the ownership of the prior application was misappreciated—in fact Petitioner does not represent the owner of 100 percent interest in the patent previously sought to be disclaimed.

• On 5 August, 2010, Petitioner filed in this matter for the third time a petition to withdraw this terminal disclaimer (TD) averred to have been erroneously filed.

As noted above, the Examiner in charge of this application indicated that once the 27 July, 2010, TD was accepted/approved, she would not object to withdrawal of the 30 September, 2010, TD or reinstate the double-patenting objection that led to its submission.

The guidance in the Commentary at MPP §1490 provides in pertinent part:

VII.WITHDRAWING A RECORDED TERMINAL DISCLAIMER

If timely requested, a recorded terminal disclaimer may be withdrawn before the application in which it is filed issues as a patent, or in a reexamination proceeding, before the reexamination certificate issues. After a patent or reexamination certificate issues, it is unlikely that a recorded terminal disclaimer will be nullified.

A. Before Issuance Of Patent

While the filing and recordation of an unnecessary terminal disclaimer has been characterized as an "unhappy circumstance" in *In re Jentoft*, 392 F.2d 633, 157 USPQ 363 (CCPA 1968), there is no statutory prohibition against nullifying or otherwise canceling the effect of a recorded terminal disclaimer which was erroneously filed before the patent issues. *>Because< the terminal disclaimer would not take effect until the patent is granted, and the public has not had the opportunity to rely on the terminal disclaimer, relief from this unhappy circumstance may be available by way of petition or by refiling the application (other than by refiling it as a CPA).

Under appropriate circumstances, consistent with the orderly administration of the examination process, the nullification of a recorded terminal disclaimer may be addressed by filing a petition under 37 CFR §1.182 requesting withdrawal of the recorded terminal disclaimer. Petitions seeking to reopen the question of the propriety of the double patenting rejection that prompted the filing of the terminal disclaimer have not been favorably considered. The filing of a continuing application other than a CPA, while abandoning the application in which the terminal disclaimer has been filed, will typically nullify the effect of a terminal disclaimer. The filing of a Request for Continued Examination (RCE) of an application under 37 CFR §1.114 will not nullify the effect of a terminal disclaimer, *>because< a new application has not been filed, but rather prosecution has been continued in the existing application. (Emphasis supplied.)

Application No. 11/450,896

It appears as of this writing that the barriers to withdrawal of the 30 September, 2009, TD have been removed.

Accordingly, the petition is granted.

This application is released to the Technology Center/AU 1634 for further processing in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2⁴) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's/Caller's action(s).

/ John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

The regulations at 37 C.F.R. §1.2 provide: §1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.





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GENOMIC HEALTH, INC. C/O KATHLEEN DETERMANN 301 PENOBSCOT ROAD **REDWOOD CITY, CA 94063**

MAILED

SEP 07 2010

In re Application of

OFFICE OF PETITIONS

Baker, et al.

DECISION ON PETITION

Application No. 11/450,896

Filed: 9 June, 2006

Attorney Docket No. 39740-0001C2

This is a decision on the petition filed on 25 August, 2010, and supplemented on 26 August, 2010, requesting pursuant to the regulations at 37 C.F.R §1.182 that the acceptance of the terminal disclaimer originally filed herein on 15 September, 2009, be withdrawn

NOTE:

Petitioner now has filed of record a clarification as to the amendment cancelling claims in Application No. 11/345,611, upon which the Examiner has concurred in the withdrawal of the Terminal Disclaimer (TD) averred to have been erroneously filed.

Petitioner further filed on 27 July, 2010, a CREATE Act TD which Petitioner submitted to replace the 15 September, 2009, TD, which earlier paper Petitioner asserted was incorrect.

On 5 August, 2010, the Examiner mailed a Summary of a 4 August, 2010, Interview, in which the Examiner:

- Acknowledged the submission of the 27 July, 2010, TD, and indicated that, were that latter TD accepted, the 15 September, 2009, TD could be withdrawn without reinstatement of the double-patenting objection; and
- Noted, however, at that conversation and writing the Office had not yet accepted the 27 July, 2010, TD.

On 5 August, 2010, the Office approved/accepted the 27 July, 2010, TD.

The petition pursuant to 37 C.F.R §1.182 is **GRANTED**.

BACKGROUND

On 15 January, 2010, Petitioner filed a petition pursuant to the regulations at 37 C.F.R §1.182 that the acceptance of the terminal disclaimer (TD) originally filed herein on 15 September, 2009, be withdrawn. Petitioner averred that the original averment of the TD of common ownership was incorrect. For several reasons already of record, the petition was dismissed on 29 March, 2010.²

On 29 April, 2010, Petitioner re-advanced his petition,³ and sought to negotiate with the Office by indicating that if the Office permitted withdrawal of the 15 September, 2010, TD, Petitioner would file a replacement TD. The Office chose not to negotiate with Petitioner, and dismissed the petition on 14 July, 2010.

Petitioner, it appears, then telephoned the Office on or about 26 July, 2010, but received no agreement to permit withdrawal of the 15 September, 2010, TD in the absence of a replacement TD filed of record.

Thereafter:

- On 27 July, 2010, Petitioner filed a CREATE Act TD with which Petitioner sought to replace the 15 September, 2009, TD, which earlier paper Petitioner asserted was incorrect.
- On 5 August, 2010, the Examiner mailed a Summary of a 4 August, 2010, Interview, in which the Examiner:
 - —Acknowledged the submission of the 27 July, 2010, TD, and indicated that, were that latter TD accepted, the 15 September, 2009, TD could be withdrawn without reinstatement of the double-patenting objection; and
 - —Noted, however, at that conversation and writing the Office had not yet accepted the 27 July, 2010, TD.

In the first petition, Petitioner averred that amendments made in the application obviated the necessity for the terminal disclaimer filed in the instant application on 15 September, 2009, as to Patent No. 7,526,387 (Application No. 10/883,303).

² All the while Petitioner averred to statements and understandings between Petitioner and the Examiner not of record—which averment Petitioner, as one registered to practice before the Office, is aware is not proper: All practice before the Office is in writing (see: 37 C.F.R. §1.2²) and the proper authority for action on any matter are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

On second petition Petitioner asserted that his representations to the Office on submission of the 16 September, 2009, TD were in error, and his representations to the Office on the first petition also were in error, and that the actual reason is that the ownership of the prior application was misappreciated—in fact Petitioner does not represent the owner of 100 percent interest in the patent previously sought to be disclaimed.

- On 5 August, 2010, the Office approved/accepted the 27 July, 2010, TD.
- On 5 August, 2010, Petitioner filed in this matter for the third time a petition to withdraw this terminal disclaimer (TD) averred to have been erroneously filed.

On 25 August, 2010, Petitioner sought additional clarification of the matter and on 26 August, 2010, Petitioner submitted of record herein a copy of the cancellation of claims upon which the Examiner has based a concurrence in the withdrawal of the 15 September, 2009 TD.

As noted above, the Examiner in charge of this application indicated that once the 27 July, 2010, TD was accepted/approved, she would not object to withdrawal of the 15 September, 2010, TD or reinstate the double-patenting objection that led to its submission..

The guidance in the Commentary at MPP §1490 provides in pertinent part:

VII.WITHDRAWING A RECORDED TERMINAL DISCLAIMER

If timely requested, a recorded terminal disclaimer may be withdrawn before the application in which it is filed issues as a patent, or in a reexamination proceeding, before the reexamination certificate issues. After a patent or reexamination certificate issues, it is unlikely that a recorded terminal disclaimer will be nullified.

A. Before Issuance Of Patent

While the filing and recordation of an unnecessary terminal disclaimer has been characterized as an "unhappy circumstance" in *In re Jentoft*, 392 F.2d 633, 157 USPQ 363 (CCPA 1968), there is no statutory prohibition against nullifying or otherwise canceling the effect of a recorded terminal disclaimer which was erroneously filed before the patent issues. *>Because< the terminal disclaimer would not take effect until the patent is granted, and the public has not had the opportunity to rely on the terminal disclaimer, relief from this unhappy circumstance may be available by way of petition or by refiling the application (other than by refiling it as a CPA).

Under appropriate circumstances, consistent with the orderly administration of the examination process, the nullification of a recorded terminal disclaimer may be addressed by filing a petition under 37 CFR §1.182 requesting withdrawal of the recorded terminal disclaimer. Petitions seeking to reopen the question of the propriety of the double patenting rejection that prompted the filing of the terminal disclaimer have not been favorably considered. The filing of a continuing application other than a CPA, while abandoning the application in which the terminal disclaimer has been filed, will typically nullify the effect of a terminal disclaimer. The filing of a Request for Continued Examination (RCE) of an application under 37 CFR §1.114 will not nullify the effect of a terminal disclaimer, *>because< a new application has not been filed, but rather prosecution has been continued in the existing application. (Emphasis supplied.)

It appears as of this writing that the barriers to withdrawal of the 15 September, 2009, TD have been removed.

Accordingly, the petition is **granted**.

This application is released to the Technology Center/AU 1634 for further processing in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2⁴) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's/Caller's action(s).

// John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

The regulations at 37 C.F.R. §1.2 provide:

^{§1.2} Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE



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GENOMIC HEALTH, INC. C/O KATHLEEN DETERMANN 301 PENOBSCOT ROAD REDWOOD CITY, CA 94063

MAILED
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OFFICE OF PETITIONS

In re Application of Baker, et al.

Application No. 11/450,896

Filed: 9 June, 2006

Attorney Docket No. 39740-0001C2

: DECISION ON PETITION

This is a decision on the petition filed on 5 November, 2010, , requesting pursuant to the regulations at 37 C.F.R §1.182 that the acceptance of the terminal disclaimers originally filed herein on 23 July, 2009, and 15 September, 2009, be withdrawn.

NOTE:

With Petitioner's clarification as to the amendment cancelling claims in Application No. 11/345,611, upon which the Examiner has concurred in the withdrawal of the Terminal Disclaimers (TDs) averred to have been erroneously filed, this matter is resolved as described below.

Petitioner filed on 27 July, 2010, a CREATE Act TD which Petitioner submitted to replace the 23 July, 2009, TD and the 15 September, 2009, TD, which earlier papers Petitioner asserted was incorrect. On 5 August, 2010, the Examiner mailed a Summary of a 4 August, 2010, Interview, in which the Examiner:

- Acknowledged the submission of the 27 July, 2010, TD, and indicated that, were that latter TD accepted, the 15 September, 2009, TD could be withdrawn without reinstatement of the double-patenting objection; and
- Noted, however, at that conversation and writing the Office had not yet accepted the 27 July, 2010, TD.

On 5 August, 2010, the Office approved/accepted the 27 July, 2010, TD.

.dle c modele e mounter. modele handle Application No. 11/450,896

The petition pursuant to 37 C.F.R §1.482 is **GRANTED** as to withdrawal of the 23 July, 2009, terminal disclaimer and the 15 September, 2009, terminal disclaimer.

人名哈伯曼 安托

: BACKGROUND

On 15 January, 2010, Petitioner filed a petition pursuant to the regulations at 37 C.F.R §1.182 that the acceptance of the terminal disclaimer (TD) originally filed herein on 15 September, 2009, be withdrawn. Petitioner averred that the original averment of the TD of common ownership was incorrect. For several reasons already of record, the petition was dismissed on 29 March, 2010.²

On 29 April, 2010, Petitioner re-advanced his petition,³ and sought to negotiate with the Office by indicating that if the Office permitted withdrawal of the 15 September, 2009, TD, Petitioner would file a replacement TD. The Office chose not to negotiate with Petitioner, and dismissed the petition on 14 July, 2010.

Petitioner, it appears, then telephoned the Office on or about 26 July, 2010, but received no agreement to permit withdrawal of the 15 September, 2009, TD in the absence of a replacement TD filed of record.

18.

Thereafter:

- On 27 July, 2010, Petitioner filed a CREATE Act TD with which Petitioner sought to replace the 15 September, 2009, TD, which earlier paper Petitioner asserted was incorrect.
- On 5 August, 2010, the Examiner mailed a Summary of a 4 August, 2010, Interview, in which the Examiner:
 - —Acknowledged the submission of the 27 July, 2010, TD, and indicated that, were that latter TD accepted, the 15 September, 2009, TD could be withdrawn without reinstatement of the double-patenting objection; and
 - —Noted, however, at that conversation and writing the Office had not yet accepted the 27 July, 2010, TD.

¹ In the first petition, Petitioner averred that amendments made in the application obviated the necessity for the terminal disclaimer filed in the instant application on 15 September, 2009, as to Patent No. 7,526,387 (Application No. 10/883,303).

² All the while Petitioner averred to statements and understandings between Petitioner and the Examiner not of record—which averment Petitioner, as one registered to practice before the Office, is aware is not proper. All practice before the Office is in writing (see: 37 C.F.R. §1.2°) and the proper authority for action on any matter are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

On second petition Petitioner asserted that his representations to the Office on submission of the 16 September, 2009, TD were in error, and his representations to the Office on the first petition also were in error, and that the actual reason is that the ownership of the prior application was misappreciated—in fact Petitioner does not represent the owner of 100 percent interest in the patent previously sought to be disclaimed.

- On 5 August, 2010, the Office approved/accepted the 27 July, 2010, TD.
- On 5 August, 2010, Petitioner, filed in this matter for the third time a petition to withdraw this terminal disclaimer (TD) averred to have been erroneously filed.

On 25 August, 2010, Petitioner sought additional clarification of the matter and on 26 August, 2010, Petitioner submitted of record herein a copy of the cancellation of claims upon which the Examiner has based a concurrence in the withdrawal of the 23 July, 2009, TD and the 15 September, 2009 TD.

As noted above, the Examiner in charge of this application indicated that once the 27 July, 2010, TD was accepted/approved, she would not object to withdrawal of the 23 July, 2009, TD and the 15 September, 2010, TD or reinstate the double-patenting objection that led to its submission.

The guidance in the Commentary at MPP §1490 provides in pertinent part:

VII.WITHDRAWING A RECORDED TERMINAL DISCLAIMER

If timely requested, a recorded terminal disclaimer may be withdrawn before the application in which it is filed issues as a patent, or in a reexamination proceeding, before the reexamination certificate issues. After a patent or reexamination certificate issues, it is unlikely that a recorded terminal disclaimer will be nullified.

A. Before Issuance Of Patent

While the filing and recordation of an unnecessary terminal disclaimer has been characterized as an "unhappy circumstance" in *In re Jentoft*, 392 F.2d 633, 157 USPQ 363 (CCPA 1968), there is no statutory prohibition against nullifying or otherwise canceling the effect of a recorded terminal disclaimer which was erroneously filed before the patent issues. *>Because< the terminal disclaimer would not take effect until the patent is granted, and the public has not had the opportunity to rely on the terminal disclaimer, relief from this unhappy circumstance may be available by way of petition or by refiling the application (other than by refiling it as a CPA).

Under appropriate circumstances, consistent with the orderly administration of the examination process, the nullification of a recorded terminal disclaimer may be addressed by filing a petition under 37 CFR §1.182 requesting withdrawal of the recorded terminal disclaimer. Petitions seeking to reopen the question of the propriety of the double patenting rejection that prompted the filing of the terminal disclaimer have not been favorably considered. The filing of a continuing application other than a CPA, while abandoning the application in which the terminal disclaimer has been filed, will typically nullify the effect of a terminal disclaimer. The filing of a Request for Continued Examination (RCE) of an application under 37 CFR §1.114 will not nullify the effect of a

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terminal disclaimer, *>because < a new application has not been filed, but rather prosecution has been continued in the existing application. (Emphasis supplied.)

It appears as of this writing that the barriers to withdrawal of the 23 July, 2009, terminal disclaimer and the 15 September, 2009, terminal disclaimer have been removed and those terminal disclaimers may be withdrawn.

Accordingly, the petition is granted.

This application is released to the Technology Center/AU 1634 for further processing in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2⁴) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's/Caller's action(s).

/ John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

The regulations at 37 C.F.R. §1.2 provide:

^{§1.2} Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

DATE	: <u>March 30, 2012</u>	
TO SPE OF SUBJECT	***************************************	ection for Appl. No.: <u>11/450920</u> Patent No.: <u>8069399</u>
		Co f C mailroom date: 03-14-12
Please resp	ond to this request for a ce	ertificate of correction within 7 days.
FOR IFW FI	LES:	
IFW application		corrections as shown in the COCIN document(s) in the r should be introduced, nor should the scope or
	plete the response (see be nent code COCX .	elow) and forward the completed response to scanning
FOR PAPE	R FILES:	
		corrections as shown in the attached certificate of (see below) and forward it with the file to:
Palm	Location 7500	
Note:	Location 7580	
Note:		Certificates of Correction Branch
	000000000000000000000000000000000000000	
Thank You The reques	For Your Assistance	Certificates of Correction Branch
Thank You The reques	For Your Assistance t for issuing the above-ic	Certificates of Correction Branch 571-272-0423
Thank You The reques Note your decision	For Your Assistance t for issuing the above-ice on the appropriate box. Approved	Certificates of Correction Branch 571-272-0423 dentified correction(s) is hereby:
Thank You The reques Note your decision	For Your Assistance t for issuing the above-ice on the appropriate box. Approved	Certificates of Correction Branch 571-272-0423 dentified correction(s) is hereby: All changes apply.
Thank You The reques Note your decision X	For Your Assistance t for issuing the above-ice on the appropriate box. Approved Approved in Part Denied	Certificates of Correction Branch 571-272-0423 dentified correction(s) is hereby: All changes apply. Specify below which changes do not apply.
Thank You The reques Note your decision X	For Your Assistance t for issuing the above-ice on the appropriate box. Approved Approved in Part Denied	Certificates of Correction Branch 571-272-0423 dentified correction(s) is hereby: All changes apply. Specify below which changes do not apply. State the reasons for denial below.
Thank You The reques Note your decision X	For Your Assistance t for issuing the above-ice on the appropriate box. Approved Approved in Part Denied	Certificates of Correction Bran 571-272-0423 dentified correction(s) is hereby: All changes apply. Specify below which changes do not apply. State the reasons for denial below.

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MCCARTER & ENGLISH, LLP BOSTON 265 Franklin Street Boston, MA 02110 MAILED

JUN 0 1 2011

OFFICE OF PETITIONS

In re Application of Morgan et al.

Application No. 11/450,938 Filing Date: June 9, 2006

Attorney Docket No. 117726-15608

On Application For Patent Term Adjustment

This is in response to the "Application for Patent Term Adjustment Including Request for Reconsideration Under 37 CFR §1.705(b)" filed March 18, 2011. Applicants submit the correct patent term adjustment to be indicated on the patent is eight hundred eighty (880) days, not one hundred twenty-eight (128) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, an applicant may wait until the time of the issuance of the patent and file a request for reconsideration of the

patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee. ¹

The \$200 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b) has been charged to Deposit Account No. 50-4876.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley Senior Petitions Attorney Office of Petitions

¹ For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MCCARTER & ENGLISH, LLP BOSTON 265 Franklin Street Boston, MA 02110

MAILED

SEP 29 2011

In re Application of Morgan et al.

Patent No. 7,972,994

Issue Date: July 5, 2011 Application No. 11/450,938

Filing Date: June 9, 2006

Attorney Docket No. 117726-15608

OFFICE OF PETITIONS

This is a decision on the petition under 37 C.F.R. § 1.705(d) filed August 18, 2011, which requests the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by eight hundred and eighty (880) days.

The petition is dismissed.

The application matured into United States Patent No. 7,972,994, with a revised patent term adjustment of 761 days, on July 5, 2011. The instant petition was timely filed within two months of the issue date of the patent.

The petition argues:

- 1. The correct period of delay under 37 C.F.R. § 1.703(b) ("B Delay") is 756 days, not 754 days, and
- 2. The Office's entry of a 119-day reduction in patent term adjustment for delay under 37 C.F.R. § 1.704(c)(10) was improper.

B Delay

Patentees dispute the period of time excluded from B delay for appellate review. Patentees' argument has been considered, but not found persuasive. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. § 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this

instance the period consumed by appellate review is 2 days, which is the number of days beginning December 22, 2010, the date the notice of appeal was filed, and ending December 23, 2010, the date the Office mailed the Notice of Allowance. Thus, the period of B Delay is 754 (756 -2) days.

It is noted that the Office issued a Notice of proposed rulemaking entitled Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements, 76 Fed. Reg. 18990 (April 6, 2011). To the extent that the final rule on Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review revises the interpretation of appellate review applied in this decision, Patentees are given one (1) month or thirty (30) days, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under 37 C.F.R. § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. § 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Delay Under 37 C.F.R. § 1.704(c)(10)

The Office mailed a Notice of Allowance on December 23, 2010.

The Office mailed a Notice to File Correct Application Papers on February 9, 2011.

On March 9, 2011, Patentees filed a corrected drawing in response to the February 9, 2011 notice.

The patent issued July 5, 2011.

The Office entered a reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(10) of 119 days, which is the number of days beginning March 9, 2011, the date the corrected drawing was filed, and ending July 5, 2011, the date the patent issued.

Patentees contend the submission of the drawing after allowance should not have resulted in a reduction in patent term adjustment,

37 C.F.R. § 1.704(c)(10) states,

[Upon] [s]ubmission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed ... the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

- (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or
- (ii) Four months.

The Office has explicitly recognized drawings filed after allowance will result in a reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(10). Section 2732 of the Manual of Patent Examining ("MPEP") (8th ed., Rev. 8, July 2010) states,

37 CFR 1.704(c)(10) establishes submission of an amendment under 37 CFR 1.312 or other paper after a notice of allowance has been given or mailed as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application....

Papers that will be considered a failure to engage in reasonable efforts to conclude processing or examination of an application include ... drawings[.]

In this case, Patentees filed a drawing on March 9, 2011. The drawing was clearly a paper filed after a notice of allowance was mailed. Therefore, in view of 37 C.F.R. § 1.704(c)(10) and MPEP § 2732, the reduction in patent term adjustment was warranted.

Pursuant to 37 C.F.R. § 1.704(c)(10), the proper reduction in patent term adjustment is four months unless the number of days, if any, beginning on the date paper was filed and ending on the mailing date of the Office action or notice in response to the paper was less than four months. In other words, if an Office action or notice was not mailed within four months of the date of submission of the drawing, the proper reduction in patent term adjustment is four months.

Patentees argue the Office did not mail a notice or Office action in response to the submission of the drawing. The Office considers the issuance of a patent to be an "Office action or notice in response" to drawings filed after allowance if a separate Office action or notice is not mailed prior to issuance of the patent. The number of days beginning on the date the drawing was filed and ending on the date the patent issued is 119 days, which is less than four months. Therefore, the correct reduction in patent term adjustment is 119 days.

Conclusion

In view of the prior discussion, the patent term adjustment remains 761 days, as set forth on the patent.

Receipt of the \$200 fee set forth in 37 C.F.R. § 1.18(e) for consideration of the petioin is acknowledged.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley Senior Petitions Attorney Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

GENOMIC HEALTH, INC. C/O KATHLEEN DETERMANN 301 PENOBSCOT ROAD REDWOOD CITY CA 94063

MAILED

AUG 1 6 2010

In re Application of Baker, et al.

OFFICE OF PETITIONS

Application No. 11/450,962

DECISION ON PETITION

Filed: 9 June, 2006

Attorney Docket No. GHI-0001-C3.US

This is a decision on the petition filed on 5 August, 2010, requesting pursuant to the regulations at 37 C.F.R §1.182 that the acceptance of the terminal disclaimer originally filed herein on 15 September, 2009, be withdrawn

NOTE:

For the third time Petitioner filed in this matter a petition to withdraw this terminal disclaimer (TD) averred to have been erroneously filed.

Petitioner further filed on 27 July, 2010, a CREATE Act TD which Petitioner submitted to replace the 15 September, 2009, TD, which earlier paper Petitioner asserted was incorrect.

On 5 August, 2010, the Examiner mailed a Summary of a 4 August, 2010, Interview, in which the Examiner:

- Acknowledged the submission of the 27 July, 2010, TD, and indicated that, were that latter TD accepted, the 15 September, 2009, TD could be withdrawn without reinstatement of the double-patenting objection; and
- Noted, however, at that conversation and writing the Office had not yet accepted the 27 July, 2010, TD.

On 5 August, 2010, the Office approved/accepted the 27 July, 2010, TD.

The petition pursuant to 37 C.F.R §1.182 is **GRANTED**.

BACKGROUND

On 15 January, 2010, Petitioner filed a petition pursuant to the regulations at 37 C.F.R §1.182 that the acceptance of the terminal disclaimer (TD) originally filed herein on 15 September, 2009, be withdrawn. Petitioner averred that the original averment of the TD of common ownership was incorrect. For several reasons already of record, the petition was dismissed on 22 March, 2010.²

On 20 April, 2010, Petitioner re-advanced his petition,³ and sought to negotiate with the Office by indicating that if the Office permitted withdrawal of the 15 September, 2010, TD, Petitioner would file a replacement TD. The Office chose not to negotiate with Petitioner, and dismissed the petition on 6 July, 2010.

Petitioner, it appears, then telephoned the Office on or about 26 July, 2010, but received no agreement to permit withdrawal of the 15 September, 2010, TD in the absence of a replacement TD filed of record.

Thereafter:

- On 27 July, 2010, Petitioner filed a CREATE Act TD with which Petitioner sought to replace the 15 September, 2009, TD, which earlier paper Petitioner asserted was incorrect.
- On 5 August, 2010, the Examiner mailed a Summary of a 4 August, 2010, Interview, in which the Examiner:
 - —Acknowledged the submission of the 27 July, 2010, TD, and indicated that, were that latter TD accepted, the 15 September, 2009, TD could be withdrawn without reinstatement of the double-patenting objection; and
 - —Noted, however, at that conversation and writing the Office had not yet accepted the 27 July, 2010, TD.

In the first petition, Petitioner averred that amendments made in the application obviated the necessity for the terminal disclaimer filed in the instant application on 30 September, 2009, as to Patent No. 7,526,387 (Application No. 10/883,303).

² All the while Petitioner averred to statements and understandings between Petitioner and the Examiner not of record—which averment Petitioner, as one registered to practice before the Office, is aware is not proper: All practice before the Office is in writing (see: 37 C.F.R. §1.2²) and the proper authority for action on any matter are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

On second petition Petitioner asserted that his representations to the Office on submission of the 30 September, 2009, TD were in error, and his representations to the Office on the first petition also were in error, and that the actual reason is that the ownership of the prior application was misappreciated—in fact Petitioner does not represent the owner of 100 percent interest in the patent previously sought to be disclaimed.

- On 5 August, 2010, the Office approved/accepted the 27 July, 2010, TD.
- On 5 August, 2010, Petitioner filed in this matter for the third time a petition to withdraw this terminal disclaimer (TD) averred to have been erroneously filed.

As noted above, the Examiner in charge of this application indicated that once the 27 July, 2010, TD was accepted/approved, she would not object to withdrawal of the 15 September, 2010, TD or reinstate the double-patenting objection that led to its submission..

The guidance in the Commentary at MPP §1490 provides in pertinent part:

VII.WITHDRAWING A RECORDED TERMINAL DISCLAIMER

If timely requested, a recorded terminal disclaimer may be withdrawn before the application in which it is filed issues as a patent, or in a reexamination proceeding, before the reexamination certificate issues. After a patent or reexamination certificate issues, it is unlikely that a recorded terminal disclaimer will be nullified.

A. Before Issuance Of Patent

While the filing and recordation of an unnecessary terminal disclaimer has been characterized as an "unhappy circumstance" in *In re Jentoft*, 392 F.2d 633, 157 USPQ 363 (CCPA 1968), there is no statutory prohibition against nullifying or otherwise canceling the effect of a recorded terminal disclaimer which was erroneously filed before the patent issues. *>Because< the terminal disclaimer would not take effect until the patent is granted, and the public has not had the opportunity to rely on the terminal disclaimer, relief from this unhappy circumstance may be available by way of petition or by refiling the application (other than by refiling it as a CPA).

Under appropriate circumstances, consistent with the orderly administration of the examination process, the nullification of a recorded terminal disclaimer may be addressed by filing a petition under 37 CFR §1.182 requesting withdrawal of the recorded terminal disclaimer. Petitions seeking to reopen the question of the propriety of the double patenting rejection that prompted the filing of the terminal disclaimer have not been favorably considered. The filing of a continuing application other than a CPA, while abandoning the application in which the terminal disclaimer has been filed, will typically nullify the effect of a terminal disclaimer. The filing of a Request for Continued Examination (RCE) of an application under 37 CFR §1.114 will not nullify the effect of a terminal disclaimer, *>because< a new application has not been filed, but rather prosecution has been continued in the existing application. (Emphasis supplied.)

Application No. 11/450,962

It appears as of this writing that the barriers to withdrawal of the 15 September, 2009, TD have been removed.

Accordingly, the petition is granted.

This application is released to the Technology Center/AU 1634 for further processing in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2⁴) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's/Caller's action(s).

/ John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

The regulations at 37 C.F.R. §1.2 provide:

^{§1.2} Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Genomic Health, Inc. (Bozicevic, Field & Francis)
c/o Kathleen Determann
301 Penobscot Road
Redwood City CA 94063

JAN 1 0 2011 OFFICE OF PETITIONS

In re Patent No. 7,838,224 BAKER et al.

Issued: November 23, 2010

Application No. 11/450,962

Filed: June 9, 2006

Attorney Docket No. GHI-0001-

C3.US

: DECISION ON REQUEST FOR

: RECONSIDERATION OF PATENT

: TERM ADJUSTMENT AND

: NOTICE OF INTENT TO ISSUE

: CERTIFICATE OF CORRECTION

:

This is a decision on the petition filed on December 16, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by seventy-two (72) days.

The petition to correct the patent term adjustment is being **GRANTED** to the extent that patent term adjustment indicated on the above-identified patent is **seventy-one** (71) days.

On November 23, 2010, the above-identified application matured into U.S. Patent No. 7,838,224. The patent issued with a revised Patent Term Adjustment of 10 days. On December 16, 2010, patentees filed a timely request for reconsideration within two months of the date the patent issued. See 37 CFR 1.705(d).

Patentees assert that they should be assessed a period of delay of 38 days for the mailing of a supplemental reply pursuant to $37 \, \text{CFR} \, 1.704 \, \text{(c)} \, (8)$.

Patentees' assertion is well taken. A review of the application history confirms that patentees' characterization of the basis

for and amount of the reduction of patent term is correct. Accordingly, a period of reduction of 38 days will be entered.

Next, patentees dispute the reduction of 120 days associated with the filing of the Terminal Disclaimer on July 27, 2010, after the mailing of the notice of allowance pursuant to 37 CFR 1.704(c)(10). Specifically, patentees assert that the Office accepted the Terminal Disclaimer and mailed a responsive communication in the form of a decision on August 16, 2010. Patentees contend that the period of delay is 20 days, not 120 days.

Patentees' contention is well taken. However, the period of reduction pursuant to 37 CFR 1.704(c)(10) is 21 days (not 20 days), counting the number of day beginning on July 27, 2010, the filing date of the Terminal Disclaimer, and ending on August 16, 2010, the mailing date of the decision in response to the Terminal Disclaimer. Accordingly, the period of reduction of 120 days will be removed and a period of reduction of 21 days will be entered.

In view thereof, the patent term adjustment indicated on the patent should be 71 days.

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges the payment of the \$200.00 fee set forth in 37 CFR 1.18(e) as authorized. No additional fees are required.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by seventy-one (71) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Partera Donnell

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT : 7,838,224 B2

DATED : Nov. 23, 2010

INVENTOR(S): Baker et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (514) days.

Delete the phrase "by 10 days" and insert – by 71 days--





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Genomic Health, Inc.
(Bozicevic, Field & Francis)
c/o Kathleen Determann
301 Penobscot Road
Redwood City CA 94063

MAILED

NOV 19 2010

OFFICE OF PETITIONS

In re Application of

Baker et al. : DECISION ON APPLICATION

Application No. 11/450,973 : FOR

Filed: June 9, 2006 : PATENT TERM ADJUSTMENT

Docket No. 39740-0001C1

This is a decision on the APPLICATION FOR PATENT TERM ADJUSTMENT PRE-GRANT, filed September 20, 2010. The petition will be treated under 37 C.F.R. § 1.705(b). Applicants request that the initial determination of patent term adjustment be corrected from ten (10) to fifty-five (55) days.

The application for patent term adjustment (PTA) is **GRANTED to** the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is **fifty-three** (53) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 22, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 10 days. On September 20, 2010, applicants timely submitted an application for patent term adjustment (with required fee). Applicants dispute (1) the reduction of 2 days in connection with a response after non-final Office action, filed on February 8, 2010 and (2) the reduction of 43 days for

¹ The Issue Fee payment was also received on September 20, 2010.

the filing of an Information Disclosure Statement (IDS) on March 23, 2010.

Applicants state that the application is subject to terminal disclaimers.

Applicants dispute the period of reduction of 2 days, pursuant to 37 CFR 1.704(b), for Applicant delay in filing a response on February 8, 2010, a Monday, to the non-final Office action, mailed November 6, 2009.

While the February 8, 2010 response was timely with respect to avoiding abandonment, it was not timely for purposes of determining patent term adjustment. Per 37 CFR 1.704(b), applicants are responsible for replying to an Office action within three months of the date the Office action was mailed or given to them. The date of receipt in the Office is the salient date for purposes of determining patent term adjustment. Applicants may wish to consider the use of the "Express Mail Post Office to Addressee " service of the United States Postal Service (37 CFR 1.10) or facsimile transmission (37 CFR 1.6(d)) for replies to be accorded the earliest possible filing date for patent term adjustment calculations. Alternatively, applicants may choose to mail correspondence with sufficient time to ensure that the correspondence is received in the Office (and stamped with a date of receipt) before the expiration of the three-month period. See MPEP 2731.

Applicants argue that the March 23, 2010 IDS should not be considered a supplemental paper.

Applicants' argument has been considered, and found persuasive. After applicants filed a reply on February 8, 2010 to a non-final Office action, applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) on March 23, 2010. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. However, a review of the IDS, filed March 23, 2010, reveals that applicants included a statement under 37 CFR 1.704(d).²

² Pursuant to 37 CFR § 1.704(d):

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution

Therefore, the IDS filed on March 23, 2010 is not a supplemental paper within the meaning of 37 CFR 1.704(c)(8). The IDS was not filed under circumstances that constitute a failure to engage in reasonable efforts to conclude examination of the examination. Accordingly, no reduction pursuant to 1.704(c)(8) was warranted. The reduction of 43 days has been removed.

In view thereof, the determination of the patent term adjustment at the time of the mailing of the notice of allowance is **fifty-three** (53) days (278 Office delay - 225 Applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

⁽processing or examination) of the application under paragraphs (c) (6), (c) (8), (c) (9), or (c) (10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56 (c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney

Office of Petitions

Enclosure: copy of updated PAIR calculations for Application

No. 11/450,973

CC: JAMES S. KEDDIE

BOZICEVIC, FIELD & FRANCIS LLP 1900 UNIVERSITY AVENUE, SUITE 200

EAST PALO ALTO, CA 94303



United States Patent and Trademark Office

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2010

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Portal Home **Patents** Trademarks Other Patent eBusiness - 0 Patent Application Information Retrieval Electronic Filing Order Certified Application As Filed Order Certified File Wrapper View Order List \pm Patent Application Information (PAIR) GENE EXPRESSION PROFILING IN BIOPSIED TUMOR TISSUES 11/450,973 Patent Ownership Select Application Transaction Image File New Case & Data History Wrapper Continuity Published Address & Data Documents Attorney/Agent + Fees Patent Term Adjustments Supplemental Resources & Support **Patent Term Adjustment** Patent Information Filing or 371(c) Date: 06-09-2006 Overlapping Days Between {A and B} or {A and C}: 0 Patent Guidance and General Info Issue Date of Patent: Non-Overlapping USPTO Delays: 278 **Codes, Rules & Manuals** Employee & Office Directories A Delays: 278 PTO Manual Adjustments: 43 Resources & Public Notices B Delays: 0 Applicant Delays: 268 C Delays: 0 Total PTA Adjustments: **Patent Searches** 53 Patent Term Adjustment History Explanation Of Calculations Patent Official Gazette **Search Patents & Applications** PTO APPL **Number Date Contents Description Search Biological Sequences** Start (Days) (Days) Copies, Products & Services 11-19-125 Adjustment of PTA Calculation by PTO 10 0 2010 Other 11-19-<u>Copyrights</u> 124 Adjustment of PTA Calculation by PTO 53 0 2010 Trademarks Policy & Law 06-22-110 Mail Notice of Allowance Reports 2010 06-21-109 Issue Revision Completed n 2010 06-21-108 Document Verification 2010 06-21-107 Notice of Allowance Data Verification Completed 0 2010 06-21-106 **Examiner's Amendment Communication** 2010 06-21-105 Notice of Allowability 2010 06-07-104 Paralegal TD Accepted 0 2010 06-04-103 Mail Examiner Interview Summary (PTOL - 413) 0 2010 05-27-102 Terminal Disclaimer Filed 100 2010 05-28-101 Date Forwarded to Examiner 0 2010 05-27-100 Amendment after Final Rejection 0 2010 05-27-Examiner Interview Summary Record (PTOL -99 0 2010 413) 05-25-98 Mail Advisory Action (PTOL - 303) 0 2010 05-24-97 Advisory Action (PTOL-303) 0 2010 05-07-96 Date Forwarded to Examiner 2010 05-04-95 Amendment after Final Rejection 2010 05-03-94 Mail Examiner Interview Summary (PTOL - 413) 2010 04-19-Examiner Interview Summary Record (PTOL -

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	92	04-22- 2010	Mail Final Rejection (PTOL - 326)		. 0
•	91	04-21- 2010	Final Rejection		0
	90	03-23- 2010	Information Disclosure Statement considered		0
	89	04-14- 2010	Paralegal TD Accepted		0
	88	04-14- 2010	Paralegal TD Accepted		0
	87	04-14- 2010	Paralegal TD Accepted		0
	86	02-08- 2010	Terminal Disclaimer Filed		0
	84	03-23- 2010	Information Disclosure Statement (IDS) Filed	43	81
•	83	03-23- 2010	Information Disclosure Statement (IDS) Filed		0
	82	03-05- 2010	Date Forwarded to Examiner		0
	81	02-08- 2010	Response after Non-Final Action	2	79
	80	11-19- 2009	Filing Receipt - Corrected		0
	79	11-06- 2009	Mail Non-Final Rejection		0
	78	11-06- 2009	Non-Final Rejection		0
	76	08-26- 2009	Information Disclosure Statement considered		0
	75	05-04- 2009	Corrected filing receipt		0
	74	09-25- 2009	Paralegal TD Accepted		0
	73	08-26- 2009	Terminal Disclaimer Filed	0	67
	72	08-26- 2009	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received		0
	71	08-26- 2009	Electronic Information Disclosure Statement		0
	70	08-28- 2009	Date Forwarded to Examiner	•	0
	69	08-26- 2009	Amendment Submitted/Entered with Filing of CPA/RCE		0
	68	08-28- 2009	Date Forwarded to Examiner		0
	67	08-26- 2009	Request for Continued Examination (RCE)	85	51
	66	08-28- 2009	Disposal for a RCE / CPA / R129		0
	65	08-26- 2009	Request for Extension of Time - Granted		0
	64	08-26- 2009	Information Disclosure Statement (IDS) Filed		0
	63	08-26- 2009	Workflow - Request for RCE - Begin		0
	62	06-12- 2009	Miscellaneous Incoming Letter		0
	61	06-24- 2009	Mail Examiner Interview Summary (PTOL - 413)		0
	60	06-09- 2009	Examiner Interview Summary Record (PTOL - 413)		0

⁻ 59	05-29- 2009	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received			0
58	05-29- 2009	Mail Advisory Action (PTOL - 303)			0
57	05-27- 2009	Advisory Action (PTOL-303)			0
56	05-14- 2009	Date Forwarded to Examiner			0
55	05-04- 2009	Amendment after Final Rejection			0
54	05-04- 2009	Terminal Disclaimer Filed			0
53	05-12- 2009	Paralegal TD Accepted			0
52	05-04- 2009	Terminal Disclaimer Filed			0
51	03-02- 2009	Mail Final Rejection (PTOL - 326)			0
50	02-27- 2009	Final Rejection			0
49	06-26- 2008	Information Disclosure Statement considered			0
48	12-16- 2008	Date Forwarded to Examiner			0
47	12-10- 2008	Response after Non-Final Action		61	42
46	12-10- 2008	Request for Extension of Time - Granted		,	0
45	10-29- 2008	Change in Power of Attorney (May Include Associate POA)			0
44	10-29- 2008	Correspondence Address Change			0
43	06-26- 2008	Information Disclosure Statement (IDS) Filed		17	34
42	07-10- 2008	Mail Non-Final Rejection			0
41	06-26- 2008	Information Disclosure Statement (IDS) Filed			0
40	07-07- 2008	Non-Final Rejection			0
39	06-09- 2006	Information Disclosure Statement considered			0
38	11-21- 2006	Information Disclosure Statement considered			0
35	06-30- 2008	Date Forwarded to Examiner			0
34	06-09- 2008	Response to Election / Restriction Filed			0
33	05-06- 2008	Miscellaneous Incoming Letter			0
32	06-16- 2008	Correspondence Address Change			0
31	05-13- 2008	Mail Restriction Requirement	278		-1
30	05-07- 2008	Requirement for Restriction / Election			0
29	04-21- 2008	Case Docketed to Examiner in GAU		•	0
28	03-22- 2007	PG-Pub Issue Notification			0
27	01-30- 2007	Preliminary Amendment			0

11-21- 2006				
24.7 11-21- 2006	26	Case Docketed to Examiner in GAU		0
24. 2006	25	Reference capture on IDS		0
11-21- 2006 New or Additional Drawing Filed 12-206 New or Additional Drawing Filed 12-21- 2006 Reference capture on IDS Information Disclosure Statement (IDS) Filed 10-206 Information Disclosure Statement (IDS) Filed Information Disclo	24.7	Information Disclosure Statement (IDS) Filed		0
11-21- 2006 Preliminary Amendment Company Pre-Exam Office Action Withdrawn Company Pre-Exam Office Action	24	Information Disclosure Statement (IDS) Filed .		0
22 2006 Preliminary Amendment 21 06-09- 2006 Reference capture on IDS 20.7 06-09- 2006 Information Disclosure Statement (IDS) Filed 20 06-09- 2006 Information Disclosure Statement (IDS) Filed 20 06-09- 2006 Preliminary Amendment 30 06-09- 2006 Application Return from OIPE 31 12-11- 32006 Payment of additional filing fee/Preexam 40 12-08- 32006 Pre-Exam Office Action Withdrawn 40 12-08- 40 Application Return TO OIPE 41 12-08- 4006 Application Dispatched from OIPE 51 12-08- 4006 Application Dispatched from OIPE 61 12-08- 4006 Application Dispatched from OIPE 61 12-08- 4006 Application Is Now Complete 61 12-11- 4006 Application Dispatched from OIPE 61 12-08- 4006 Application Is Now Complete 61 12-12- 4006 Claim Preliminary Amendment 61 12-12- 4006 Claim Preliminary Amendment 62 11-21- 4006 Date Assigned 63 06-19- 40 0	23	 New or Additional Drawing Filed	•	0
20.7 06-09- 2006	22	Preliminary Amendment		0
20.	21	 Reference capture on IDS		0
200 2006 Information Disclosure Statement (IDS) Filed 19 06-09- 2006 Preliminary Amendment 12-08- 2006 Application Return from OIPE 17 12-11- 2006 Application Is Now Complete 16 11-21- 2006 Pre-Exam Office Action Withdrawn 17 12-08- 2006 Application Return TO OIPE 18 12-08- 2006 Application Return TO OIPE 19 12-08- 2006 Application Dispatched from OIPE 10 12-08- 2006 Application Dispatched from OIPE 10 06-09- 2006 Claim Preliminary Amendment 10 06-09- 2006 Claim Preliminary Amendment 2006 Date Assigned 2006 Office Corrected Papers problems 2006 Office Claim Preliminary Amendment 2006 Date Assigned 2006 CASE CLASSIFIED BY OIPE 2006 CASE CLASSIFIED BY OIPE 2006 Office CRF Is Good Technically / Entered into Database 2 06-09- 2006 CRF Disk Has Been Received by Preexam / Group / PCT 2006 Office Town Team no	20.7	Information Disclosure Statement (IDS) Filed		0
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18	19	 Preliminary Amendment		0
17 2006 Application Is Now Complete 16 11-21- 2006 Payment of additional filling fee/Preexam 60 8 15 12-08- 2006 Pre-Exam Office Action Withdrawn 60 14 12-08- 2006 Application Return TO OIPE 60 13 12-08- 2006 Application Dispatched from OIPE 70 10 12-08- 2006 Application Is Now Complete 70 10 06-09- 2006 Claim Preliminary Amendment 70 9 11-21- 2006 Application Is Now Complete 70 8 06-22- 2006 Notice MailedApplication IncompleteFilling 70 10 06-19- 2006 Cleared by OIPE CSR 70 10 06-19- 2006 CASE CLASSIFIED BY OIPE 70 10 06-15- 2006 CRF Is Good Technically / Entered into 70 2006 Database 70 2006 CRF Disk Has Been Received by Preexam / 70 2006 Group / PCT 70 2006 Isitial Exam Team Top 70 2006 Section Withdrawn 70 2007 Section Withdrawn 70 2007 Section Withdrawn 70 2008 Sect	18	Application Return from OIPE		, 0
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15 2006 Pre-Exam Office Action Withdrawn 12-08- 2006 Application Return TO OIPE 13 12-08- 2006 Application Dispatched from OIPE 12 12-08- 2006 Application Is Now Complete 10 06-09- 2006 Claim Preliminary Amendment 9 11-21- Applicant has submitted new drawings to 2006 correct Corrected Papers problems 8 06-22- Notice MailedApplication IncompleteFiling 2006 Date Assigned 6 06-19- 2006 Cleared by OIPE CSR 5 06-19- 2006 CASE CLASSIFIED BY OIPE 4 06-16- 2006 IFW Scan & PACR Auto Security Review 2 06-09- CRF Disk Has Been Received by Preexam / 2006 Group / PCT 1 06-09- Initial Exam Team pg	16	Payment of additional filing fee/Preexam	60	8
14 2006 Application Return TO OIPE 13 12-08- 2006 Application Dispatched from OIPE 12 12-08- 2006 Application Is Now Complete 10 06-09- 2006 Claim Preliminary Amendment 9 11-21- Applicant has submitted new drawings to correct Corrected Papers problems 8 06-22- Notice MailedApplication IncompleteFiling Date Assigned 6 06-19- 2006 Cleared by OIPE CSR Cleared by OIPE CSR 5 06-19- 2006 CASE CLASSIFIED BY OIPE 4 06-16- 2006 IFW Scan & PACR Auto Security Review 3 06-15- CRF Is Good Technically / Entered into Database 2 06-09- CRF Disk Has Been Received by Preexam / Group / PCT 1 06-09- Initial Exam Team on	15	 Pre-Exam Office Action Withdrawn		0
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2006 correct Corrected Papers problems 8	10	Claim Preliminary Amendment		0
2006 Date Assigned 6 06-19- 2006 Cleared by OIPE CSR 5 06-19- 2006 CASE CLASSIFIED BY OIPE 4 06-16- 2006 IFW Scan & PACR Auto Security Review 3 06-15- CRF Is Good Technically / Entered into 2006 Database 2 06-09- CRF Disk Has Been Received by Preexam / 2006 Group / PCT	9			0
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2006 CASE CLASSIFIED BY OIPE 4 06-16- 2006 IFW Scan & PACR Auto Security Review 3 06-15- CRF Is Good Technically / Entered into 2006 Database 2 06-09- CRF Disk Has Been Received by Preexam / 2006 Group / PCT	6	Cleared by OIPE CSR		0
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2 06-09- CRF Disk Has Been Received by Preexam / 2006 Group / PCT	4	IFW Scan & PACR Auto Security Review		0
2006 Group / PCT 1 06-09- Initial Evam Team pp	3			0
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	1	Initial Exam Team nn		0

If you need help:

- Call the Patent Electronic Business Center at (866) 217-9197 (toll free) or e-mail <u>EBC@uspto.gov</u> for specific questions about Patent Application Information Retrieval (PAIR).
 Send general questions about USPTO programs to the <u>USPTO Contact Center (UCC)</u>.
 If you experience technical difficulties or problems with this application, please report them
- via e-mail to Electronic Business Support or call 1 800-786-9199.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Leason Ellis LLP 81 Main Street, Suite 100 White Plains, NY 10601

In re Application of

DHUPER, SUNIL KUMAR et al.

DECISION ON PETITION

Application No. 11/450,974

Filed: June 8, 2006

Attorney Docket No.: 20379/0204263-US0:

This is a decision on the Petition To Withdraw Holding of Abandonment under 37CFR 1.81 (a), received in the United States Patent and Trademark Office (USPTO) on January 21, 2010.

The petition is **GRANTED**.

The application was held abandoned for failure to timely submit the Issue fee and Publication fee as required by the Notice of Allowance, mailed July 24, 2009 which set forth a three (3) month statutory period for reply. The Notice of Abandonment was mailed on November 6, 2009.

Petitioner states that the Notice of Allowance and Fees due mailed on July 24, 2009 were not received. Petitioner submitted a copy of the docketing record for this application as documentary proof of nonreceipt. Petitioner also included a statement that the Notice was not received at the correspondence address of record.

In view of the foregoing, the holding of abandonment for failure to timely submit the issue fee is hereby withdrawn and the application is restored to pending status.

The application will be forwarded to the Technology Center for the remailing of the Notice of Allowance.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 756-

1547.

Kay D. Pinkney

Application Assistance Unit Office of Data Management

cc:

DARBY & DARBY P.C. P.O. BOX 770 **Church Street Station** New York NY 10008-0770



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O.-Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Leason Ellis LLP 81 Main Street Suite 503 White Plains NY 10601

MAILED

In re Application of

Dhuper et al.

Application No. 11/450974

Filing or 371(c) Date: 06/08/2006

Title of Invention:

ADAPTER FOR USE IN AN

AEROSOL DELIVERY SYSTEM

DEC 02 2010

OFFICE OF PETITIONS

ON PETITION

This is a decision on the Request to Withdraw Holding of Abandonment, filed January 21, 2010. The request is properly treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181(a).

This Petition is hereby granted.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due ("Notice"), mailed July 24, 2009. The Notice set a non-extenable three (3) month period for reply. No response having been received, the application became abandoned on October 25, 2009. A Notice of Abandonment was mailed November 6, 2009.

With the present petition, Applicant has demonstrated non-receipt of the Notice by a preponderance of the evidence in accordance with the MPEP 711.03(c)¹. Applicant has also submitted the issue fee in response to the Notice.

In view of the foregoing, the petition is granted. The holding of abandonment is hereby withdrawn.

No petition fee has been charged and none is due.

¹ A review of Office records reveals that this Office inadvertently entered mailed the Notice of Allowance and Issue Fee Due to an incorrect correspondence address. Office records have been corrected.

The application will be referred to the Publishing Division for processing into a patent in the normal course of business.

Library Constitution

egy mane matthes

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions

DATE	:August 4, 2011	
TO SPE OF	: ART UNIT <u>1635</u>	
SUBJECT	: Request for Certificate of Corre	ction for Appl. No.: <u>11/451004</u> Patent No.: <u>7763592 B2</u>
		CofC mailroom date: 12-03 -10
Please resp	ond to this request for a ce	rtificate of correction within 7 days.
FOR IFW FI	LES:	
IFW applicat		corrections as shown in the COCIN document(s) in the should be introduced, nor should the scope or
•	plete the response (see bel	ow) and forward the completed response to scanning
FOR PAPER	R FILES:	
		corrections as shown in the attached certificate of see below) and forward it with the file to:
Cartif	finator of Correction Brow	ach (CafC)
Rand Palm	ficates of Correction Bran olph Square – 9D10-A Location 7580	Magdalene Talley
Rand Palm	olph Square – 9D10-A Location 7580	
Rand Palm	olph Square – 9D10-A Location 7580	Magdalene Talley
Rand Palm Note:	olph Square – 9D10-A Location 7580	Magdalene Talley Certificates of Correction Branch
Rand Palm Note: Thank You The request	olph Square – 9D10-A Location 7580 For Your Assistance	Magdalene Talley Certificates of Correction Branch
Rand Palm Note: Thank You The request Note your decision	olph Square – 9D10-A Location 7580 For Your Assistance t for issuing the above-ide	Magdalene Talley Certificates of Correction Branch 571-272-0423
Rand Palm Note: Thank You The request Note your decision	For Your Assistance t for issuing the above-ide	Magdalene Talley Certificates of Correction Branch 571-272-0423 entified correction(s) is hereby:
Rand Palm Note: Thank You The request Note your decision X	For Your Assistance t for issuing the above-ident on the appropriate box.	
Rand Palm Note: Thank You The request Note your decision X	For Your Assistance t for issuing the above-ide on the appropriate box. Approved Approved in Part	Magdalene Talley Certificates of Correction Branch 571-272-0423 entified correction(s) is hereby: All changes apply. Specify below which changes do not apply. State the reasons for denial below.
Rand Palm Note: Thank You The request Note your decision X	For Your Assistance t for issuing the above-ide on the appropriate box. Approved Approved in Part Denied	Magdalene Talley Certificates of Correction Branch 571-272-0423 entified correction(s) is hereby: All changes apply Specify below which changes do not apply. State the reasons for denial below.
Rand Palm Note: Thank You The request Note your decision X	For Your Assistance t for issuing the above-ide on the appropriate box. Approved Approved in Part Denied	Magdalene Talley Certificates of Correction Branch 571-272-0423 entified correction(s) is hereby: All changes apply Specify below which changes do not apply. State the reasons for denial below.
Rand Palm Note: Thank You The request Note your decision X	For Your Assistance t for issuing the above-ide on the appropriate box. Approved Approved in Part Denied	Magdalene Talley Certificates of Correction Branch 571-272-0423 entified correction(s) is hereby: All changes apply Specify below which changes do not apply. State the reasons for denial below.



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Alexandria, VA 22313-1450
www.uspio.gov

LERNER GREENBERG STEMER LLP P O BOX 2480 HOLLYWOOD, FL 33022-2480

MAILED

FEB 28 2011

In re Application: : OFFICE OF PETITIONS

Kilian Kraus

Application No. 11/451,015 : NOTICE

Filed: June 12, 2006

Attorney Docket No. MOH-P030100

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed on January 5, 2011.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent application is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-6059.

Alicia Kelley

Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

SHREEN K. DANAMRAJ THE DANAMRAJ LAW GROUP, P.C. PREMIER PLACE, STE. 1450 5910 NORTH CENTRAL EXPRESSWAY DALLAS, TX 75206 MAILED
OCT 0 1 2010
OFFICE OF PETITIONS

In re Patent No. 7,692,964

Issue Date: April 6, 2010

Application No. 11/451,043 : NOTICE

Filed: June 12, 2006

Attorney Docket No. 1263-0025DIV

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-6059.

Alicia Kelley Petitions Examiner

Office of Petitions





COMMISSIONER FOR PATENTS UNITED STATES PATENT AND TRADEMARK OFFICE P.O. Box 1450 ALEXANDRIA, VA 22313-1450

MAII FO

SEP 072010

OFFICE OF PETITIONS

MERCK

PATENT DEPARTMENT (K-6-1, 1990) 2000 GALLOPING HILL ROAD KENILWORTH NJ 07033-0530

In re Application of

Iserloh et al.

Application No. 11/451,064

Filed: June 12, 2006

Docket No. CN06361US01

Title: MACROCYCLIC HETEROCYCLIC ASPARTYL PROTEASE INHIBITORS

LETTER REGARDING

PATENT TERM ADJUSTMENT

This is in response to the "Request for Reconsideration of Patent Term Adjustment Under 37 C.F.R. \$1.705(b)," filed November 17, 2009. Applicant requests that the determination of patent term adjustment be increased by two hundred and forty-three (243) days to four hundred and nine (409) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction partly on the basis that the Office will take in excess of three years to issue this patent. In addition, Applicant suggests that that one period of examination delay might have been incorrectly omitted, and Applicant contends that one period of applicant delay was incorrectly omitted.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of

issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, Applicant is advised that he may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee¹.

To the extent that Applicant otherwise requests reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance, the request is **DISMISSED**.

For example, if Applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then Applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

The record supports a conclusion that any patent issuing from this patent is not subject to a terminal disclaimer.

First, Applicant has requested the Office to review the fact that no applicant delay was accorded due to the "the impact" of the "filing of a Notice of Appeal and its resolution (the Notice of Allowance)." 2

Applicant submitted a Notice of Appeal on August 18, 2009. Pursuant to 37 C.F.R. § 1.702(a)(2), the Office was required to respond to the "appeal taken under 35 U.S.C. 134 not later than four months after the date on which...the appeal was taken." The Office responded to the Notice of Appeal via the mailing of a Notice of Allowance on September 4, 2009, which was less than four months after the filing of the Notice of Appeal. As such, no patent term adjustment is warranted regarding the mailing of the Notice of Allowance.

Secondly, Applicant disputes the Office's failure to accord a reduction of thirty-four (34) days associated with the filing of the Notice of Appeal on August 18, 2009. Pursuant to 37 C.F.R. § 1.704(b):

"an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply (emphasis added) was filed."

The Office mailed a final Office action on April 15, 2009, an after-final amendment was received on June 24, 2009 (which is less than three months after the mailing of the final Office action), and a notice of appeal was filed on August 18, 2009 (which is three months and 34 days after the mailing of the final Office action). Applicant would have the Office accord a reduction of 34 days. However, the Notice of Allowance was mailed in response to the after-final amendment, and not the

² Petition, page 2.

Notice of Appeal.³ Therefore, it is the after-final amendment that constitutes the "reply" within the meaning of 37 C.F.R. \$ 1.704(b). It follows that the reply was timely filed, and no patent term reduction is warranted regarding the filing of the notice of appeal.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance remains 166 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Applicant is reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

Anthony Knight

Director

Office of Petitions

 $^{^3}$ <u>See</u> item number one of the "Notice of Allowability": "[t]his communication is responsive to the amendment filed 24 June 2009."

			Paper No.:
DATE	04/15/10		
TO SPE OF	: ART UNIT		
SUBJECT			1451078 Patent No.: 7244736
Please respo	ond to this request for a	certificate of correct	tion within 7 days.
FOR IFW FI	LES:		
IFW applicat meaning of t	tion image. No new mat the claims be changed.	ter should be introd	own in the COCIN document(s) in thuced, nor should the scope or
	plete the response (see I nent code COCX.	below) and forward	the completed response to scanning
FOR PAPER	R FILES:	•	
Please revie correction.	w the requested change Please complete this for	es/corrections as sh m (see below) and	own in the attached certificate of crward it with the file to:
•			
Submitt	ed for Sanning	7-29-10.	Certificates of Correction Branch 703-756-1574
	ed for Sanning For Your Assistance	7-29-10.	Certificates of Correction Branch
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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

DENTSPLY INTERNATIONAL INC 570 WEST COLLEGE AVENUE YORK, PA 17404 MAILED

AUG 1 9 2010

OFFICE OF PETITIONS

In re Application of Paul Richard Pierson, et al. Application No. 11/451,108 Filed: June 12, 2006

ON PETITION

Attorney Docket No.: LDC-967-CON

This is a decision in response to the petition, filed June 18, 2010, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is not signed by an attorney or agent of record. However, in accordance with 37 CFR 1.34(a), the signature of David A. Zdurne appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts.

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to a non-final Office action mailed December 9, 2008, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on March 10, 2009. A Notice of Abandonment was mailed on July 14, 2009. On June 18, 2010, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of amendment; (2) the petition fee of \$1,620; and (3) an adequate statement of unintentional delay¹.

Extensions of time under 37 CFR 1.136 are available only if asked for prior to or with the response. In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response has expired. Since, no extension of time fees are due on a petition for revival, the \$1,110 extension fees included with this petition are being refunded to counsel's deposit account.

¹ 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While the statement is not made by an attorney of record, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The application is being referred to Technology Center AU 3754 for appropriate action by the Examiner in the normal course of business on the reply received June 18, 2010.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley Petitions Examiner Office of Petitions

DATE	. 2/28/2011	Paper No.	:
TO SPE OF	: ART UNIT 3763	- ·	
-	: ART UNIT 10/09	1/45/192 - 1925	7/ [
SUBJECT	Request for Certificate of Correct	tion for Appl. No.: <u>///45/192</u> Patent No.: <u>7837</u>	<u> 420</u>
		CofC mailroom date: 2/16/	201
		tificate of correction within 7 days.	
FOR IFW FI	LES:		
the IFW app	w the requested changes/c dication image. No new ma the claims be changed.	orrections as shown in the COCIN document(s) tter should be introduced, nor should the scope	in or
Please compusing docum	plete the response (see belonent code COCX.	ow) and forward the completed response to sca	nning
FOR PAPER	R FILES:		
Please revie	w the requested changes/c	orrections as shown in the attached certificate o	of .
correction. I	Please complete this form (see below) and forward it with the file to:	
Certif	ficates of Correction Bran	ch (CofC)	
		(55.5)	
Rand	olph Square – 9D10-A		
Rand			
Rand	olph Square – 9D10-A		
Rand	olph Square – 9D10-A	Certificates of Correction Bra	nch
Rand Palm	olph Square – 9D10-A Location 7580		inch
Rand Palm Thank You	olph Square – 9D10-A Location 7580 For Your Assistance	Certificates of Correction Bra 703-756-1814	nch
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Rand Palm Thank You The request	olph Square – 9D10-A Location 7580 For Your Assistance t for issuing the above-ide	Certificates of Correction Bra 703-756-1814 entified correction(s) is hereby:	inch
Rand Palm Thank You The request Note your decision	olph Square – 9D10-A Location 7580 For Your Assistance t for issuing the above-ide on the appropriate box. Approved	Certificates of Correction Bra 703-756-1814 entified correction(s) is hereby: All changes apply.	-
Rand Palm Thank You The request Note your decision	olph Square – 9D10-A Location 7580 For Your Assistance t for issuing the above-ide on the appropriate box: Approved Approved in Part	Certificates of Correction Bra 703-756-1814 entified correction(s) is hereby: All changes apply. Specify below which changes do not apply	<u>-</u>
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PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office



MAILED

OCT 2 0 2010

PROSKAUER ROSE LLP ONE INTERNATIONAL PLACE **BOSTON MA 02110**

OFFICE OF PETITIONS

In re Application of Lawrence Hendler et al. Application No. 11/451,223 Filed: June 12, 2006 Attorney Docket No. ASX-087

DECISION GRANTING PETITION

This is a decision on the petition under 37 C.F.R. § 1.183 to waive the requirement that co- inventor Uzi LevAmi submit a signed affidavit or declaration under 37 CFR 1.131. This decision is also considered in view of the supplemental response filed August 6, 2010.

The petition filed under 37 CFR 1.183 is **DISMISSED** as involving moot issues.

Since the petition filed July 21, 2010 had not already been addressed and in view of the response filed August 6, 2010 which included the signed Declaration from Uzi Lev Ami under 37 C.F.R. § 1.131, the petition will not be considered and will not receive any treatment by the USPTO.

This matter is being referred to Technology Center 2857 for examination in due course.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-32120

tarricia Fusin-Patricia Faison Ball

Senior Petitions Attorney

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD NJ 07090

MAILED
SEP 2.7 2010
OFFICE OF PETITIONS

In re Application of Masaya KINOSHITA et al.

Application No. 11/451,231

Filed: June 12, 2006

Attorney Docket No. SONYJP 3.0-600

DECISION ON PETITION

This is a decision on the renewed petition, filed August 30, 2010, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action of June 17, 2009, which set a one (1) month shortened statutory period for reply. Accordingly, a reply was due on or before July 17, 2009.

Petitioner states that a timely reply was mailed via certificate of mailing on July 17, 2009. Petitioner has submitted a photocopy of the firm's outgoing log.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or

after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of June 17, 2009 is hereby withdrawn and the application restored to pending status.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been mailed on July 17, 2009.

This application is being referred to Technology Center AU 2622 for appropriate action in the normal course of business on the reply received with petition.

Petitions Examiner
Office of Petitions

Doc Code: PET.AUTO Document Description: Petition a	utomatically granted by EFS-Web	PTO/SB/64 U.S. Patent and Trademark Office Department of Commerce
Electronic Petition Request	PETITION FOR REVIVAL OF AN A ABANDONED UNINTENTIONALI	
Application Number	11451240	
Filing Date	12-Jun-2006	
First Named Inventor	Mehdi Hatamian	
Attorney Docket Number	1001160HAT	
Title	Valve for facilitating and maintaining fl	uid separation
United States Patent and Traden	n became abandoned for failure to file a timely nark Office. The date of abandonment is the d on plus any extensions of time actually obtaine	ay after the expiration date of the period set for
APPLICANT HEREBY PETITIONS F	OR REVIVAL OF THIS APPLICATION	
NOTE: A grantable petition requ (1) Petition fee; (2) Reply and/or issue fee; (3) Terminal disclaimer with disc design applications; and (4) Statement that the entire del	laimer fee - required for all utility and plant ap	pplications filed before June 8, 1995; and for all
Petition Fee		
Applicant claims SMALL ENT	TITY status. See 37 CFR 1.27.	
Applicant is no longer claim	ning SMALL ENTITY status. See 37 CFR 1.27(g)(2).
 Applicant(s) status remains 	as SMALL ENTITY.	
	as other than SMALL ENTITY.	
Applicant(s) status remains	as other than SMALL ENTITY.	
Applicant(s) status remains 2. Reply and/or fee	37 CFR 1.4(d)(4) that the amendment and res	ponse have
Applicant(s) status remains 2. Reply and/or fee I certify, in accordance with	a 37 CFR 1.4(d)(4) that the amendment and res ove-identified application on	ponse have
Applicant(s) status remains 2. Reply and/or fee I certify, in accordance with already been filed in the about the Amendment and response	a 37 CFR 1.4(d)(4) that the amendment and res ove-identified application on	ponse have
Applicant(s) status remains 2. Reply and/or fee I certify, in accordance with already been filed in the about the Amendment and response RCE request, submission, and fee. I certify, in accordance with	a 37 CFR 1.4(d)(4) that the amendment and res ove-identified application on	

I certify, in accordance with 37 CFR 1.4(d)(4) that the Notice of Appeal and Fee have already been filed in the above-identified application on					
O Notice of Appeal and Fee are a	e of Appeal and Fee are attached				
3. Terminal Disclaimer is not required, since the Electronic Petition format is not support for Design applications and applications filed before June 8, 1995. Please file using regular petition format for review by the Office of Petitions.					
STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.					
THIS PORTION MUST BE COMPLETE	THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES				
I certify, in accordance with 37 CFR	1.4(d)(4) that I am:				
An attorney or agent registered in this application.	An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.				
An attorney or agent registered	to practice before the Patent and Trademark Office, acting in a representative capacity.				
A sole inventor	A sole inventor				
A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors					
A joint inventor; all of whom are signing this e-petition					
The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71					
Signature /Michael M. Ahmadshahi/					
Name Michael M. Ahmadshahi					
Registration Number	52876				



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Decision Date January 25, 2012

In re Application of Mehdi Hatamian

Application No. 11451240

Filed: 12-Jun-2006

DECISION ON PETITION UNDER CFR 1.137(b)

Attorney Docket No. 1001160HAT

This is an electronic decision on the petition under 37 CFR 1.137(b), January 25, 2012 , to revive the above-identified application.

The petition is GRANTED.

The above-identified application became abandoned for failure to reply in a timely manner to the outstanding final Office action. The date of abandonment is the day after the last day of the period set for reply in the Office action plus any applicable extensions of time properly requested.

The electronic petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment and/or response, Request for Continued Examination, and the filing fee required under 37 CFR 1.17(e); (2) the petition fee as set forth in 37 CFR 1.17 (m); and (3) the required statement of unintentional delay have been received. Accordingly, the Request for Continued Examination and the amendment and/or response are accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being directed to the Technology Center.

Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

AT&T Legal Department - HFZ ATTN. Patent Docketing One AT&T Way Room 2A-207 Bedminstor NJ 07921 MAILED
SEP 1 3 2010
OFFICE OF PETITIONS

In re Application of

Jia Wang, et al.

Application No. 11/451,261 : DECISION ON PETITION

Filed: June 12, 2006 :

Attorney Docket No. 2005-0586 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 23, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, March 19, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 20, 2009. The Notice of Abandonment was mailed August 20, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$1,620, and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2416 for appropriate action by the Examiner in the normal course of business on the reply received.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions

cc: HANLEY, FLIGHT & ZIMMERMAN, LLC 150 South Wacker Drive, Suite 2100 Chicago, IL 60606

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED

ARENT FOX LLP 1050 CONNECTICUT AVENUE, N.W. SUITE 400 WASHINGTON DC 20036

JUN 15 2011

OFFICE OF PETITIONS

In re Patent of Cacace

Patent No. 7,866,499

Issued: January 11, 2011

Application No. 11/451,300

Filed: June 13, 2006

Attorney Docket No. 026269.00007

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28(c), filed May 16, 2011.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley Senior Petitions Attorney

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

MAILED

SEP 2 4 2010

OFFICE OF PETITIONS

MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO IL 60661

In re Application of MCDONNELL et al.

Application No. 11/451,322

Filed: 06/13/2006

Attorney Docket No. 20183US01

ON APPLICATION FOR

PATENT TERM ADJUSTMENT

This is in response to the petition under 37 CFR 1.705(b) filed September 7, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent is 410 days, not 0 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants seek this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within three years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under 37 CFR 1.702(a)(4) or applicant delay under 37 CFR 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a

determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss such a request as premature.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.1

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within two months

For example, if applicants dispute both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed, and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicants must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3211.

C. P. Donnell

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO IL 60661

MAILED JAN 03 2011 OFFICE OF PETITIONS

In re Patent No. 7,822,891 : DECISION ON REQUEST FOR

McDonnell et al.

Application No. 11/451,322

Filed: June 13, 2006

Attorney Docket No. 20183US01:

: RECONSIDERATION OF

Issue Date: October 26, 2010 : PATENT TERM ADJUSTMENT AND

: NOTICE OF INTENT TO ISSUE

CERTIFICATE OF CORRECTION

This is a decision on the petition filed on December 22, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by three hundred fifty-three (353) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is GRANTED to the extent indicated herein. The term of the above-identified patent is extended or adjusted by two hundred eighty-five (285) days.

Patentee correctly determined that the period of adjustment under 37 CFR 1.702(b) ("over three year period") is 500 days. Further, patentee acknowledged that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). However, patentee incorrectly calculated the period consumed by appellate review as 56 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, June 18, 2009, and ending on the date of the decision by a pre-appeal brief conference panel, August 13, 2009.

Pursuant to 37 CFR 1.703:

- (b) The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods:
 - The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

The Office notes the that "a decision by a pre-appeal brief conference panel to withdraw the rejections of any or all of the claims on appeal is not a decision by a panel of the Board of Patent Appeals and Interferences, and, as such, would not result in any patent term extension of adjustment under 35 U.S.C. Sec. 154(b) (37 CFR 1.701(a)(3) and 1.702(e))." Pre-Appeal Brief Conference Pilot Program, 1296 OG 67 (July 12, 2005). Thus, the period consumed by appellate review is 124 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, June 18, 2009, and ending on the date of mailing of the non-final Office action, October 19, 2009. Thus, the B delay is 376 days (500 - 124).

Accordingly, the patent term adjustment is 285 days (208 days of A delay + 376 days of B delay - 1 day of overlap - 298 days of applicant delay).

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a

certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

The Office acknowledges the submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fee is required.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by two hundred eighty-five (285) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Partere Donnell

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT:

7,822,891 B2

DATED:

Oct. 26, 2010

DRAFT

INVENTOR(S): McDonnell et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [*] Notice: under 35 USC 154(b) by 286 days.

Delete the phrase "by 286 days" and insert – by 285 days--



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

HEALTH HERO NETWORK, INC. 2400 GENG ROAD, SUITE 200 PALO ALTO CA 94303 **MAILED**

JUN 17 2011

OFFICE OF PETITIONS

In re Application of

Brown

:

Application No. 11/451,546 : I

Filed/Deposited: 12 June, 2006

Attorney Docket No. 7553.00004 / 06-0433

DECISION

This is a decision on the petition filed on 18 May, 2011, supplemented thereafter on 1 June, 2011, considered as a petition pursuant to 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition pursuant to 37 C.F.R. §1.181 is **GRANTED**.

As to the Request to Withdraw the Holding of Abandonment

Petitioners always are directed to the Commentary at MPEP §711.03(c)(l) for guidance as to the proper showing and timeliness requirements for relief pursuant to 37 C.F.R. §1.181.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly, to the decision of the Board of Patent Appeals and Interferences (BPAI) mailed on 10 March, 2011, with reply due absent extension of time on or before 10 May, 2010.¹

706.07(h) Request for Continued Examination (RCE) Practice [R-6] - 700 Examination of Applications

The period for reply following a decision of the Board of Patent Appeals and Interferences (BPAI) is discussed in the guidance in the Commentary at MPEP §706.07(h), which provides in pertinent part:

The application went abandoned by operation of law after midnight 10 May, 2011.

The Office mailed the Notice of Abandonment on 12 May, 2011.

On 18 May, 2011, Petitioner filed a petition pursuant to 37 C.F.R. §1.181 and averred timely electronic filing on 10 March, 2011—however, at that time Petitioner failed to submit true copies of papers averred to have been so submitted and any Acknowledgement Receipt in connection therewith, in compliance with and satisfaction of the guidance in the Commentary at MPEP §711.03(c)(I). Petitioner appears to have overcome that deficiency on 1 June, 2011—the Office notes Petitioner's failure to recite that the papers submitted at that time were true copies, however, the Office so construes Petitioner's submission and places Petitioner on Notice that if the Office's construal is in error Petitioner <u>must</u> so immediately Notice the Office.

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, the guidance in the Commentary at MPEP §711.03(c)(I) provides in pertinent part:

37 C.F.R. §1.10(c) through §1.10(e) and §1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 C.F.R. §1.10(c), (d), (e), or (g) (see MPEP §513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.

XI. AFTER DECISION BY THE BOARD

A. Proper RCE After Board Decision

The filing of an RCE (accompanied by the fee and a submission) after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit (Federal Circuit) or the commencement of a civil action in federal district court, will also result in the finality of the rejection or action being withdrawn and the submission being considered. Generally, the time period for filing a notice of appeal to the Federal Circuit or for commencing a civil action is within twö months of the Board's decision. See 37 CFR 1.304 and MPEP § 1216. Thus, an RCE filed within this two month time period and before the filing of a notice of appeal to the Federal Circuit or the commencement of a civil action would be timely filed. In addition to the res judicata effect of a Board of Patent Appeals and Interferences decision in an application (see MPEP § 706.03(w)), a Board decision in an application is the "law of the case," and is thus controlling in that application and any subsequent, related application. See MPEP § 1214.01 (where a new ground of rejection is entered by the Board of Patent Appeals and Interferences pursuant to 37 CFR *>41.50(b)<, argument without either amendment of the claims so rejected or the submission of a showing of facts can only result in a final rejection of the claims, since the examiner is without authority to allow the claims unless amended or unless the rejection is overcome by a showing of facts not before the Board of Patent Appeals and Interferences). As such, a submission containing arguments without either amendment of the rejected claims or the submission of a showing of facts will not be effective to remove such rejection.

Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP §503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.

Where a certificate of mailing under 37 C.F.R. §1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 C.F.R. 1.8(b) and MPEP §512. As stated in 37 C.F.R. §1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 C.F.R. §1.8).

37 C.F.R. §1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 C.F.R. §1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP §512.

Petitioners always are reminded to move stepwise through the guidance when making their showing pursuant to 37 C.F.R. §1.181 and with the guidance in the Commentary at MPEP §711.03(c)(I).

² See: MPEP §711.03(c) (I)(B).

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (see: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.³

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application. ^{4,5}

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other

³ See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §11.18 (formerly 37 C.F.R. §10.18) to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

⁴ See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an <u>unavoidable</u> delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under <u>Pratt</u>, and so cannot satisfy the test for diligence and due care. (By contrast, <u>unintentional</u> delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, <u>and</u> also, by definition, are not intentional.))

means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.⁶

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears to have made the showing required.

CONCLUSION

Accordingly, the petition as considered pursuant to 37 C.F.R. §1.181 is **granted**, and the 12 May, 2011, Notice of Abandonment hereby is **vacated**.

The instant application is released to the Technology Center/AU 3769 for further processing (to await the Examiner's Answer) in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to that change in status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

⁶ In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

Application No. 11/451,546

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2⁷) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

⁷ The regulations at 37 C.F.R. §1.2 provide: §1.2 Business to be transacted in writing.

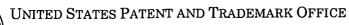
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

		Paper No.:20110110			
DATE	: January 10, 2011				
TO SPE OF	: ART UNIT 2824				
SUBJECT	: Request for Certificate of Correct	ction on Patent No.: RE41950			
A response is	requested with respect to the accomp	panying request for a certificate of correction.			
Please complete this form and return with file, within 7 days to: Certificates of Correction Branch - PK 3-910 Palm location 7590 - Tel. No. 305-8201					
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.					
Thank You	For Your Assistance	Certificates of Correction Branch			
	t for issuing the above-identified on the appropriate box.	correction(s) is hereby:			
⊠ Ap	pproved	All changes apply.			
☐ Ap	oproved in Part	Specify below which changes do not apply.			
□ De	enied	State the reasons for denial below.			
Comments:					
/at/ 01/10/20	011	RICHARD T. ELMS SUPERVISORY PATENT EXAMINER TECHNOLOGY CENTER 2800			
2824		SPE: /Richard Elms/ SPE 1.10.11 Art Unit 2824			

PTOL-306 (Rev. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

PERKINS COIE LLP P.O. Box 1208 Seattle, WA 98111-1208

MAILED

AUG 3 0 2010

In re Application of

Michael Mackay

Application No. 11/451,614

Filed: June 11, 2006

Attorney Docket No. 59961-8001.US01

OFFICE OF PETITIONS

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 23, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by R. Michael Ananian on behalf of all attorneys of record. All attorneys/agents have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Michael Mackay at the address indicated below.

There is an outstanding Office action mailed June 1, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Terri Johnson at 571-272-2991.

Petitions Examiner Office of Petitions

cc:

Michael Mackay 143 Fremont Avenue Los Altos, CA 94022



22918

United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. box 1450 Alexandria, Virginia 22313-1450 www.uppto.gov

APPLICATION NUMBER

PERKINS COIE LLP P.O. BOX 1208

FILING OR 371(C) DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

11/451,614

SEATTLE, WA 98111-1208

06/11/2006

Michael Mackay

59961-8001.US01 **CONFIRMATION NO. 9665**

POWER OF ATTORNEY NOTICE

Date Mailed: 08/30/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 07/23/2010.

• The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/tsjohnson/			

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

BARCELO, HARRISON & WALKER, LLP 2901 W. COAST HWY SUITE 200 NEWPORT BEACH, CA 92663

MAILED
FEB 23 2011
OFFICE OF PETITIONS

In re Application of

Tommy Guess, et al.

Application No. 11/451,685 : DECISION GRANTING PETITION

Filed: June 13, 2006 : UNDER 37 CFR 1.313(c)(2)

Attorney Docket No. TCOM0046

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 21, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on February 7, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 2611 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/AMW/ April M. Wise Petitions Examiner Office of Petitions

¹ The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). <u>Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.</u>

SPE RESPONSE	FOR CERTIFICATE OF CORRECTION			
:February 1, 2012				
: ART UNIT <u>2112</u>				
: Request for Certificate of Cor	rrection for Appl. No.: 11/451724 . Patent No.: 8046657			
	CofC mailroom date: 1-28-12			
and to this request for a	certificate of correction within 7 days.			
<u>_ES</u> :				
	s/corrections as shown in the COCIN document(s) in matter should be introduced, nor should the scope or			
Please complete the response (see below) and forward the completed response to scanni using document code COCX.				
FILES:				
	s/corrections as shown in the attached certificate of m (see below) and forward it with the file to:			
icates of Correction Br olph Square – 9D10-A Location 7580				
	•			
	Certificates of Correction Branch			
	571-272-0423			
or Your Assistance				
for issuing the above- on the appropriate box.	identified correction(s) is hereby:			
Approved	All changes apply.			
Approved in Part	Specify below which changes do not apply.			
Approved in Part Denied	Specify below which changes do not apply. State the reasons for denial below.			
Denied				
Denied	State the reasons for denial below.			
Denied	State the reasons for denial below.			
Denied	State the reasons for denial below.			
Denied	State the reasons for denial below.			
	: February 1. 2012 : ART UNIT 2112 : Request for Certificate of Control to this request for a control to this request for a control to the requested changes it is a control to the requested changed. The control to the response (see the response (see the requested changes it is a complete this formation of the requested changes it is a complete this formation of the square – 9D10-A Location 7580 For Your Assistance For Your Assistance For issuing the above-on the appropriate box.			

PTOL-306 (REV. 7/03)

· · · · · · · · · · · · · · · · · · ·	SPE RESPON	SE FOR CERTIFICATE OF CORRECTION	ON			
DATE	10-29-11		Paper No.:			
TO SPE OF $^{\prime}$: ART UNIT 2184	/	✓			
SUBJECT	: Request for Certificate of C	Correction for Appl. No.: VV451.78	Patent No.: 1721068			
		• • •	ilroom date: 6-24-11			
Please resp	ond to this request for a	a certificate of correction within 7 c				
FOR IFW F	ILES: Check	Lik	•			
the IFW app	ew the requested chang	es/corrections as shown in the CC matter should be introduced, nor	OCIN document(s) in should the scope or			
Please comusing docum	Please complete the response (see below) and forward the completed response to scanning using document code COCX.					
FOR PAPER	R FILES:					
Please revie correction.	ew the requested change Please complete this for	es/corrections as shown in the attarn (see below) and forward it with	ached certificate of the file to:			
Palm	olph Square – 9D10-A Location 7580	Enn	es of Correction Branch			
	For Your Assistance					
The request Note your decision	t for issuing the above on the appropriate box.	-identified correction(s) is here	by:			
□ ¥	Approved	All changes apply.				
	Approved in Part	Specify below which cha	anges do not apply.			
	Denied	State the reasons for de	enial below.			
Comments:						
		•				
,						
		_				
*		/Henry Tsai/	2184			
	·	SPE	Art Unit			
PTOL-306 (REV. 7/03)		U.S. DEPARTMENT OF COMMER	RCE Patent and Trademark Office			



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

FOX ROTHSCHILD LLP 997 Lenox Drive Building 3 Lawrenceville NJ 08648

MAILED
SEP 2 1 2010
OFFICE OF PETITIONS

In re Application of Horrell et al. Application No. 11/451,941 Filed: June 13, 2006 Attorney Docket No. P32653USA

DECISION ON PETITION UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed February 2, 2010 to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 for the benefit of priority to prior-filed applications.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) and (3) above.

As to item (1), a review of the specification provided shows that petitioner has failed to provide the relationship for application no.11/152,311, now patent 7,270,439.

Where the benefit of more than one nonprovisional application is claimed, then the relationship between each application (i.e., continuation, divisional, or continuation-in-part) must be specified in order to establish copendency throughout the entire chain of prior-filed applications.

For example, a statement that "this application claims the benefit of Application Nos. C, B, and A" or "this application is a continuing application of Application Nos. C, B, and A" is improper. Applicant instead must state, for example, that "this application is a continuation of Application No. C, filed ---, which is a continuation of Application No. B, filed ---, which is a continuation of Application No. A, filed ---.

As to item (3), the rule at 37 CFR § 1.78(a)(3) requires a statement that the entire delay between the date the claim was due under 37 CFR § 1.78(a)(2)(ii) and the date the claim was filed was unintentional.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition and either a signed supplemental Application Data Sheet or an amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters are required.

If Petitioner desires to receive future correspondence regarding this patent, the appropriate change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

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Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

Telephone inquiries concerning this matter should be directed to Charlema Grant at (571) 272-3215.

Christopher Bottorff

Supervisor

Office of Petitions

Cc:

Fox & Rothschild LLP

2000 Market Street, 20th Floor Philadelphia, PA 19103-3291





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

FOX ROTHSCHILD LLP 997 Lenox Drive Building 3 Lawrenceville NJ 08648

MAILED

JAN 25 2011

OFFICE OF PETITIONS

In re Application of Horrell et al. Application No. 11/451,941 Filed: June 13, 2006 Attorney Docket No. P32653USA

DECISION ON PETITIONUNDER 37 CFR 1.78(a)(3)

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed November 19, 2010 to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 for the benefit of priority to prior-filed applications.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt

accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Charlema Grant at (571) 272-3215. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 3739 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

If Petitioner desires to receive future correspondence regarding this patent, the appropriate change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

Telephone inquiries concerning this matter should be directed to Charlema Grant at (571) 272-3215.

Christopher Bottorff

CHA Brash

Supervisor

Office of Petitions

Cc:

Fox & Rothschild LLP 2000 Market Street, 20th Floor Philadelphia, PA 19103-3291



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS PO. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION	FILING or	GRP ART				
NUMBER	371(c) DATE	UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/451 941	06/13/2006	3739	590	P32653USA	21	7

20802 FOX ROTHSCHILD LLP 997 Lenox Drive Building 3 Lawrenceville, NJ 08648 CONFIRMATION NO. 2812 CORRECTED FILING RECEIPT



Date Mailed: 01/25/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections

Applicant(s)

Robin S. Horrell, Billings, MT;

David James Bibelhausen, Maineville, OH;

Mickey M. Karram, Cincinatti, OH; John F. Love, Branchburg, NJ;

Power of Attorney: The patent practitioners associated with Customer Number 20802

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/690,384 06/13/2005 and is a CIP of 11/152,311 06/13/2005 PAT 7,270,439

Foreign Applications (You may be eligible to benefit from the Patent Prosecution Highway program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 07/12/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/451,941**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

** SMALL ENTITY **

Title

Electrocautery system, provided with safe lighting during operational use

Preliminary Class

606

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE CERTIFICATE OF CORRECTION

Page 1 of 1

PATENT NO.

7,504,562

APPLICATION NO.

11/451,974

ISSUE DATE

March 17, 2009

INVENTOR(S)

Johannes Wilhelmus Schut, et al.

It is certified that an error appears or errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

ON THE FACE OF THE PATENT

:

(75) Inventors: Johannes Wilhelmus Schut, BC Wouw (NL);

Aad Ammerlaan, Aramon (FR):

Cornelis Marinus Moor, An Monster (NL)

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Vedder Price P.C. 1633 Broadway, 47th Floor New York, New York 10019

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

	00.	ONOL I ON OLIVINIONIL OF CONNECTION				
		Paper No .:20110919				
DATE	: August 18, 2011					
TO SPE C	OF: ART UNIT 1638					
SUBJECT	: Request for Certifica	te of Correction on Patent No.: 7,504,562				
A response	A response is requested with respect to the accompanying request for a certificate of correction.					
Certificat		n with file, within 7 days to: - ST (South Tower) 9A22 305-8309				
read as she		ed, correcting Office and/or Applicant's errors, should the patent ection? No new matter should be introduced, nor should the scope or				
Thank Yo	u For Your Assistance	Certificates of Correction Branch				
•	est for issuing the above sion on the appropriated box.	e-identified correction(s) is hereby:				
	Approved	All changes apply.				
	Approved in Part	Specify below which changes do not apply.				
	Denied	State the reasons for denial below.				
Commen	ts:					
		/ANNE GRUNBERG/ Supervisory Patent Examiner.Art Unit 1638				



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EDWARDS ANGELL PALMER & DODGE LLP P.O. BOX 55874 BOSTON MA 02205

MAILED FEB 01 2011

OFFICE OF PETITIONS

In re Patent No. 7,833,735

Application No. 11/452,028

Filed: June 13, 2006

Issued: November 16, 2010

Attorney Docket No. 81734CIP(301422)

ON PETITION

This is a decision on the petition filed November 23, 2010, which is being treated as a request under 37 CFR 3.81(b)¹ to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Further, the \$130.00 requisite processing fee will be charged to petitioner's deposit account as authorized November 23, 2010.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-7751. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Joan Olszewski Petitions Examiner Office of Petitions

¹ See MPEP 1309, subsection II; and Official Gazette of June 22, 2004.



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Schwabe Williamson & Wyatt PACWEST CENTER, SUITE 1900 1211 SW FIFTH AVENUE PORTLAND OR 97204

MAILED

AUG 3 0 2010

OFFICE OF PETITIONS

In re Application of David Brown, et al.
Application No. 11/452,118
Filed: June 12, 2006
Attorney Docket No. 115322-148816

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney of record under 37 CFR § 1.36, filed July 21, 2010.

The request is **NOT APPROVED**.

The request cannot be approved because it lacks a forwarding correspondence address of the first named inventor or a properly intervening assignee.

If the forwarding correspondence address is to the assignee, the Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *that properly became of record under 37 CFR 3.71.* 37 CFR 3.71(c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.

The assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, the statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-2991.

Terri Johnson

Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Schwabe Williamson & Wyatt PACWEST CENTER, SUITE 1900 1211 SW Fifth Avenue Portland, OR 97204

MAILED

NOV 08 2010

OFFICE OF PETITIONS

In re Application of

David Brown, et al.

Application No. 11/452,118

Filed: June 12, 2006

Attorney Docket No. 115322-148816

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 18, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Jo Ann Schmidt on behalf of all attorneys of record. All attorneys/agents have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor David Brown at the address indicated below.

There is an outstanding Office action mailed June 24, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Terri Johnson at 571-272-2991.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions

cc: David Brown
6 Pyms Gardens
Abbotsley, Cambridgeshire
PE19 6UT
United Kingdom



United States Patent and Trademark Office

United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450

APPLICATION NUMBER

FILING OR 371(C) DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

11/452,118

06/12/2006

David Brown

115322-148816 **CONFIRMATION NO. 1747**

POWER OF ATTORNEY NOTICE

25943 Schwabe Williamson & Wyatt PACWEST CENTER, SUITE 1900 1211 SW FIFTH AVENUE PORTLAND, OR 97204

Date Mailed: 11/05/2010

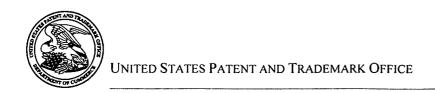
NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/18/2010.

• The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/tsjohnson/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101



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MERCK 126 East Lincoln Ave RY60-30 Rahway NJ 07065

MAILEDMAR 0 1 2011

OFFICE OF PETITIONS

In re Application of

KOLHE et al.

Application No. 11/452,167

6/13/2006

Filed: 06/13/2006

Attorney Docket No. PD06362US01

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 17, 2010, to revive the application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." No additional petition fee is necessary.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of March 5, 2010, which set a three-month shortened statutory period for response. Petitioners obtained an extension of time for response within the second month. Accordingly, the application became abandoned on August 6, 2010. The Office mailed a Notice of Abandonment on October 8, 2010. On November 17, 2010, petitioners filed the present petition.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed.
- (2) The petition fee as set forth in 37 CFR 1.17(m);

- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any terminal disclaimer (and fee set forth in § 1.20(d)) required pursuant to 37 CFR 1.137(d).

The present petition does not satisfy requirement (1) above.

With the present petition, petitioners submitted an amendment in response to the final Office action; however, the examiner found that the amendment did not place the application in condition for allowance. An Advisory Action accompanies this decision.

In a nonprovisional application abandoned for failure to reply to a final action, the reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

With any renewed petition, petitioners must submit a proper reply to the outstanding final Office action.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

By hand:

Customer Service Window

Randolph Building 401 Dulany Street Alexandria, VA 22314

Correspondence may also be submitted via the electronic filing system of the USPTO.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

C. Y. Donnell

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions

		y - · · · · · · · · · · · · · · · · · ·	
	Application No.	Applicant(s)	
Advisory Action	11/452,167	KOLHE ET AL.	
Before the Filing of an Appeal Brief	Examiner	Art Unit	
	YUNSOO KIM	1644	•
The MAILING DATE of this communication appe	ears on the cover sheet with the c	correspondence addr	ess
THE REPLY FILED 17 November 2010 FAILS TO PLACE THIS	S APPLICATION IN CONDITION F	OR ALLOWANCE.	
1. The reply was filed after a final rejection, but prior to or or this application, applicant must timely file one of the follow places the application in condition for allowance; (2) a Not a Request for Continued Examination (RCE) in compliant time periods:	wing replies: (1) an amendment, aff otice of Appeal (with appeal fee) in a ce with 37 CFR 1.114. The reply m	fidavit, or other evidence compliance with 37 CF	ce, which R 41.31; or (3)
a) The period for reply expires 3 months from the mailing date		to the final actuation while	ahawaa ia latas da
b) The period for reply expires on: (1) the mailing date of this A no event, however, will the statutory period for reply expire I Examiner Note: If box 1 is checked, check either box (a) or TWO MONTHS OF THE FINAL REJECTION. See MPEP 7	ater than SIX MONTHS from the mailin (b). ONLY CHECK BOX (b) WHEN THI 06.07(f).	g date of the final rejectio E FIRST REPLY WAS FIL	on. LED WITHIN
Extensions of time may be obtained under 37 CFR 1.136(a). The date have been filed is the date for purposes of determining the period of exunder 37 CFR 1.17(a) is calculated from: (1) the expiration date of the set forth in (b) above, if checked. Any reply received by the Office late may reduce any earned patent term adjustment. See 37 CFR 1.704(b) NOTICE OF APPEAL	tension and the corresponding amount shortened statutory period for reply orig r than three months after the mailing da).	of the fee. The appropria inally set in the final Offic ite of the final rejection, ev	ate extension fee te action; or (2) as ven if timely filed,
 The Notice of Appeal was filed on A brief in complising the Notice of Appeal (37 CFR 41.37(a)), or any external a Notice of Appeal has been filed, any reply must be filed AMENDMENTS 	ension thereof (37 CFR 41.37(e)), to	o avoid dismissal of the	s of the date of appeal. Since
3. The proposed amendment(s) filed after a final rejection,	but prior to the date of filing a brief	, will <u>not</u> be entered be	cause
(a) They raise new issues that would require further co		TE below);	
 (b) ☐ They raise the issue of new matter (see NOTE below) (c) ☐ They are not deemed to place the application in be 		educing or simplifying the	he issues for
appeal; and/or (d) ☐ They present additional claims without canceling a	corresponding number of finally re	jected claims.	
NOTE: See Continuation Sheet. (See 37 CFR 1.1	· ·		
4. The amendments are not in compliance with 37 CFR 1.1		mpliant Amendment (F	PTOL-324).
5. Applicant's reply has overcome the following rejection(s)	· · · · · · · · · · · · · · · · · · ·		
 Newly proposed or amended claim(s) would be a non-allowable claim(s). 			
7. For purposes of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected is pro The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) rejected: 5,8,14,15,19-23 and 34.		Il be entered and an ex	xplanation of
Claim(s) withdrawn from consideration: 16,24-29 and 35.			
AFFIDAVIT OR OTHER EVIDENCE		n de la C.A. de la la cella	
 The affidavit or other evidence filed after a final action, be because applicant failed to provide a showing of good an was not earlier presented. See 37 CFR 1.116(e). 	d sufficient reasons why the affida	vit or other evidence is	necessary and
 The affidavit or other evidence filed after the date of filing entered because the affidavit or other evidence failed to showing a good and sufficient reasons why it is necessar 	overcome <u>all</u> rejections under appe	al and/or appellant fail:	ls to provide a
10. ☐ The affidavit or other evidence is entered. An explanation REQUEST FOR RECONSIDERATION/OTHER	on of the status of the claims after e	entry is below or attache	ed.
11. The request for reconsideration has been considered by	ut does NOT place the application i	n condition for allowan	ce because:
12. Note the attached Information <i>Disclosure Statement</i> (s). 13. Other:	(PTO/SB/08) Paper No(s)		
•	/Yunsoo Kim/ Examiner, Art Unit 1644		

Continuation Sheet (PTO-303)

Application No. 11/452,167

Continuation of 3. NOTE: The after final amendment filed on 11/17/10 has not been entered because the new limitations recited in claims 5 and 14 and new claims 36-44 have not been searched or considered previously.

Yunsoo Kim Patent Examiner Technology Center 1600 February 28, 2011

	Application No.	Applicant(s)
Advisory Action	11/452,167	KOLHE ET AL.
Before the Filing of an Appeal Brief	Examiner	Art Unit
	YUNSOO KIM	1644
The MAILING DATE of this communication app	ears on the cover sheet with the	correspondence address
THE REPLY FILED 17 November 2010 FAILS TO PLACE TH		·
1. The reply was filed after a final rejection, but prior to or o this application, applicant must timely file one of the folloplaces the application in condition for allowance; (2) a N a Request for Continued Examination (RCE) in compliantime periods:	on the same day as filing a Notice of owing replies: (1) an amendment, af otice of Appeal (with appeal fee) in	Appeal. To avoid abandonment of fidavit, or other evidence, which compliance with 37 CFR 41.31; or (3)
 a)	Advisory Action, or (2) the date set forth later than SIX MONTHS from the mailin	ng date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or TWO MONTHS OF THE FINAL REJECTION. See MPEP Extensions of time may be obtained under 37 CFR 1.136(a). The date have been filed is the date for purposes of determining the period of e under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the set forth in (b) above, if checked. Any reply received by the Office late may reduce any earned patent term adjustment. See 37 CFR 1.704(b) NOTICE OF APPEAL	706.07(f). e on which the petition under 37 CFR 1. xtension and the corresponding amount shortened statutory period for reply orig er than three months after the mailing da	136(a) and the appropriate extension fee of the fee. The appropriate extension fee ginally set in the final Office action; or (2) as
 The Notice of Appeal was filed on A brief in comfiling the Notice of Appeal (37 CFR 41.37(a)), or any extension a Notice of Appeal has been filed, any reply must be filed. 	ension thereof (37 CFR 41.37(e)), to	o avoid dismissal of the appeal. Since
<u>AMENDMENTS</u>	·	• ,
 3. The proposed amendment(s) filed after a final rejection, (a) They raise new issues that would require further control (b) They raise the issue of new matter (see NOTE below) (c) They are not deemed to place the application in beau appeal; and/or (d) They present additional claims without canceling a NOTE: See Continuation Sheet. 4. The amendments are not in compliance with 37 CFR 1. 	onsideration and/or search (see NO ow); etter form for appeal by materially repair to corresponding number of finally rejuit and 41.33(a)).	TE below); educing or simplifying the issues for jected claims.
 5. Applicant's reply has overcome the following rejection(s 6. Newly proposed or amended claim(s) would be a 	s):	
non-allowable claim(s). 7. For purposes of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected is profit the status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) rejected: 5,8,14,15,19-23 and 34.) ⊠ will not be entered, or b) ☐ wi ovided below or appended.	•
Claim(s) withdrawn from consideration: <u>16,24-29 and 35</u>		
 AFFIDAVIT OR OTHER EVIDENCE The affidavit or other evidence filed after a final action, b because applicant failed to provide a showing of good ar was not earlier presented. See 37 CFR 1.116(e). 	ut before or on the date of filing a N nd sufficient reasons why the affida	lotice of Appeal will <u>not</u> be entered vit or other evidence is necessary and
9. The affidavit or other evidence filed after the date of filing entered because the affidavit or other evidence failed to showing a good and sufficient reasons why it is necessated. 10. The affidavit or other evidence is entered. As evalence is entered.	overcome <u>all</u> rejections under appe ry and was not earlier presented. S	al and/or appellant fails to provide a See 37 CFR 41.33(d)(1).
10. The affidavit or other evidence is entered. An explanation of the control		·
11. The request for reconsideration has been considered b	ut does NOT place the application i	n condition for allowance because:
12. Note the attached Information Disclosure Statement(s). 13. Other:	(PTO/SB/08) Paper No(s)	
	/Yunsoo Kim/ Examiner, Art Unit 1644	

Continuation Sheet (PTO-303)

Application No. 11/452,167

Continuation of 3. NOTE: The after final amendment filed on 11/17/10 has not been entered because the new limitations recited in claims 5 and 14 and new claims 36-44 have not been searched or considered previously.

Yunsoo Kim Patent Examiner Technology Center 1600 February 28, 2011



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MERCK 126 East Lincoln Ave RY60-30 Rahway NJ 07065

MAILED

JUN 08 2011

OFFICE OF PETITIONS

In re Application of

KOLHE et al.

Application No. 11/452,167

1/432,167

Filed: 06/13/2006

Attorney Docket No. PD06362US01

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed May 2, 2011, to revive the application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of October 13, 2009, which set a three-month shortened statutory period for response. Petitioners obtained an extension of time for response within the second month. Accordingly, the application became abandoned on March 14, 2010. The Office mailed a Notice of Abandonment on October 8, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that applicant has supplied (1) the reply in the form of a RCE, the RCE fee, and the submission required by 37 CFR 1.114; (2) the petition fee; and (3) a proper statement of unintentional delay.

This application is being referred to Technology Center AU 1644 for processing of the RCE and for appropriate action by the Examiner on the amendment submitted in accordance with 37 CFR 1.114.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell Senior Petitions Attorney

Office of Petitions

Doc Code: PET.PTA.RCAL

Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (02-10) Approved for use through 02/28/2011. OMB 0651-0020

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH*

Attorney Docket TR-215-US Number: Filing Date Application 11/452.200 (or 371(b) or (f) Date): 06-14-2006 Number: Patent Number: Issue Date: 02-23-2010 7668460 First Named

Carpini Inventor:

Title: METHOD AND SYSTEM FOR AVOIDING AMPLIFIED SPONTANEOUS EMISSION LOOPS IN AN OPTICAL NETWORK

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature /vdonnelly/	Date 08-16-2010			
Name (Print/Typed) Victoria Donnelly	Registration Number 44185			
Note: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*.				
*Total of ¹ forms are submitted				

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Instruction Sheet for: REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH*

(Not to be Submitted to the USPTO)

This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A).

This form must be filed within 180 days of the day the patent was granted, with the following exception:

Patentees who received a decision from the USPTO under the USPTO's pre-<u>Wyeth</u> interpretation of 35 U.S.C. 154(b)(2)(A) may file a request for reconsideration of that decision if such a request for reconsideration is filed within **two months** of the date of the decision (37 CFR 1.181(f)). If the patentee's sole basis for requesting reconsideration of the decision is the USPTO's pre-<u>Wyeth</u> interpretation of 35 U.S.C. 154(b)(2)(A), the request for reconsideration need only state that reconsideration is being requested in view of <u>Wyeth</u> (this form may be used for this purpose if it is filed within **two months** of the date of the decision from the USPTO).

Do not use this form if the application has been allowed, but not yet issued as a patent.

- 1. For patents issued before March 2, 2010: A request for reconsideration under 37 CFR 1.705(d) and the fee set forth in 37 CFR 1.18(e) are not required, provided that the patentee's sole basis for requesting recalculation of the PTA in the patent is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A) and this form is filed within 180 days of the day the patent was granted.
- 2. For patents issued on or after March 2, 2010 (do not use this form): Patentees seeking a revised PTA in a patent issued on or after March 2, 2010, must file a request for reconsideration under 37 CFR 1.705(d) that complies with the requirements of 37 CFR 1.705(b)(1) and (b)(2) within two months of the day the patent issued.

For more information, see "Notice Concerning Calculation of the Patent Term Adjustment With Respect to the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A)" available on the USPTO Web site at http://www.uspto.gov/patents/law/notices/2010.isp.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
- 2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/20/2010

VICTORIA DONNELLY PO BOX 24001 HAZELDEAN RPO KANATA, ON K2M 2C3 CANADA

Applicant : Walter Joseph Carpini : DECISION ON REQUEST FOR Patent Number : 7668460: RECALCULATION of PATENT Issue Date

: 02/23/2010 : TERM ADJUSTMENT IN VIEW Application No: 11/452,200 : OF WYETH AND NOTICE OF INTENT TO Filed : 06/14/2006 : ISSUE CERTIFICATE OF CORRECTION

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 897 days. The USPTO will sua sponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

BAKER & HOSTETLER LLP WASHINGTON SQUARE, SUITE 1100 1050 CONNECTICUT AVE. N.W. WASHINGTON DC 20036-5304

MAILED
FEB 1 0 2012
OFFICE OF PETITIONS

In re Application of

Olav M. Underdal et al

Application No. 11/452,250

Filed: June 14, 2006

Attorney Docket No. 87354.3580

DECISION GRANTING PETITION

: UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, February 8, 2012 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 21, 2011 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 3664 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

I The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Date

: February 9, 2012

TO

: Director, Office of Patent Publication

FROM

: Office of the Deputy Commissioner

for Patent Examination Policy

SUBJECT

: Withdrawal from Issue of Application No. 11/452,250

Applicant(s)

: Olav M. Underdal et al

Application No. Filed

11/452,250

June 14, 2006

The above-identified application has been assigned Patent No. 8,116,930 and an issue date of February 14, 2012.

It is hereby directed that this application be withdrawn from issue at the request of the applicant.

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of: February 14, 2012.

"All reference to Patent No. 8,116,930 to Olav M. Underdal of Michigan for DYNAMIC DECISION SEQUENCING METHOD AND APPARATUS FOR OPTIMIZING A DIAGNOSTIC TEST PLAN appearing in the Official Gazette of February 14, 2012 should be deleted since no patent was granted."

/Irvin Dingle/ Irvin Dingle Petitions Examiner Office of Petitions

cc:

Paul Harrison

Deneise Boyd (DMB) Mary Louise McAskill

Niomi Farmer

Mary E. Johnson (Cookie) Duane Davis (CDS)

Bradley Harris

Kimberly Terrell Kay Pinkney Betty Powell

Lamont Fletcher



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

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SQUIRE, SANDERS & DEMPSEY L.L.P. 8000 TOWERS CRESCENT DRIVE 14TH FLOOR VIENNA VA 22182-6212

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OFFICE OF PETITIONS

In re Patent No. 7,519,457 Issue Date: April 14, 2009 Application No. 11/452,270

Filed: June 14, 2006

Attorney Docket No. 60626.00017

DECISION ON PETITION

This is a decision on the Petition To Accept Request For Certificate Of Correction Under 37 CFR 1.183 and Request For Certificate Of Correction, filed July 17, 2010, which is being treated as a Petition Under 37 CFR §3.81(b), to identify the correct assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner urges that the present Petition was submitted to correct the assignee's name on the previously submitted PTOL 85B and such error was inadvertent. Accordingly, petitioner requests, in effect, that the Title Page of the above-identified patent be corrected, via issuance of Certificate of Correction, to correct the assignee's name identified thereon from:

"Honda Motor Company, Ltd."

to:

--Honda Motor Co., Ltd.--

37 CFR 3.81(b), effective June 25, 2004, reads:

After payment of the issue fee: Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The requisite \$100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), and the requisite \$130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), have been submitted. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form PTO/SB/44 submitted with the Petition.

· A some

Inquiries related this communication should be directed to the undersigned at (571)272-3213.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,519,457.

Cheryl Gibson-Baylor Petitions Examiner

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BLAKE CASSELS & GRAYDON LLP 199 BAY STREET, SUITE 4000 COMMERCE COURT WEST TORONTO ON M5L 1A9 CA CANADA

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MAR 2 7 2012

OFFICE OF PETITIONS

In re Application of

Alfred Menezes

Application No. 11/452,393

Filed: June 14, 2006

Attorney Docket No. 67539/646

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 9, 2012, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of July 11, 2011. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is October 12, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$930 the submission required by 37 CFR 1.114; (2) the petition fee of \$1860 and (3) a proper statement of unintentional delay.

A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3210.

This application is being referred to Technology Center AU 2433 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment filed March 9, 2012 submitted in accordance with 37 CFR 1.114.

Petition Examiner
Office of Petitions

cc: Etienne de Villiers

c/o Dimock Stratton LLP

20 Queen Street West, 32nd Floor

Toronto, Ontario Canada M5H 3R3



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MCDonnell Boehnen Hulbert & Berghoff LLP 300 S. Wacker Drive 32^{nd} Floor Chicago, IL 60606

MAÎLED DEC 08 2011

OFFICE OF PETITIONS

In re Patent No. 7,642,044

Thorgersen et al.

Issue Date: January 5, 2010

Application No. 11/452,434

Filed: June 14, 2006

Attorney Docket No. 08-347-US-

CON

Title: Trimersing Module

: DECISION UPON REMAND AND

: RECONSIDERATION OF

: PATENT TERM ADJUSTMENT

: AND NOTICE OF INTENT

: TO ISSUE CERTIFICATE OF

: CORRECTION

This is a decision following remand from the District Court for the District of Columbia regarding the patent term adjustment indicated on the above-identified patent. The Court remanded this matter to the U.S. Patent and Trademark Office for recalculation of the patent term adjustment in accordance with the decision in Wyeth & Elan Pharma Int'l Ltd. v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010).

A telephone call was made to counsel for patent owner to confirm the determination of 203 days.

The patent term adjustment indicated on the above-identified patent has been recalculated as directed by the Court. The term of the above-identified patent is extended or adjusted by TWO HUNDRED AND THREE (203) days.

The application is being forwarded to the Certificates Branch for issuance of a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by TWO HUNDRED AND THREE (203) days.

Telephone inquiries specific to this matter should be directed to Senior Legal Advisor, Kery A. Fries at (571) 272-7757.

/Kery A. Fries/

Kery A. Fries Senior Legal Advisor Attorney Office of Patent Legal Administration Office of Associate Commissioner For Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

Copy of adjusted PTA calculation

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

: 7,642,044

DATED

: January 5, 2010

DRAFT

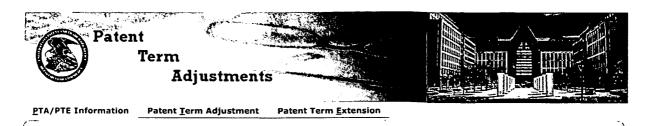
INVENTOR(S): Thogersen et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [*] Notice: under 35 USC 154(b) by 203 days

Delete the phrase "by 94 days" and insert – by 203 days--



Application Number*: 11452434

Search

Explanation of PTA Calculation

Explanation of PTE Calculation

Explanation of PTE Calculation

Application Filing Date 06/14/2006

OverLapping Davs Between (A and B) or (A and B)

Ĺ	Application Filing Date 06/14/2006	OverLapping Days Between (A and B) or (A and C)0
	Issue Date of Patent 01/05/2010	Non-Overlapping USPTO Delays: 339
1	A Delays 329	PTO Manual Adjustment 109
	B Delays 10	Applicant Delay (APPL) 245
	C Delays 0	Total PTA (days) 203

3

* - Sorted Column

File Contents History

09/02/2008

09/02/2008

06/23/2008

06/20/2008

06/03/2008

06/02/2008

Α...

C.AD

ELC_RVW Electronic Review

EML_NTF Email Notification

Action Number	Action Recorded Date	Action Due Date	Action Code	<u>Action</u> <u>Description</u>	Duration PTO	Duration APPL	Parent Action Number
101	12/01/2011		P028	Adjustment of PTA Calculation by PTO	109		0
97	04/17/2010		P034	Petition Decision - Granted			0
96	03/05/2010		PET.	Petition Entered			0
95	02/03/2010		CRFA	Sequence Moved to Public Database			0
94	01/05/2010		PGM/	Recordation of Patent Grant Mailed			0
92	01/05/2010	12/14/2009	PTAC	Patent Issue Date Used in PTA Calculation	22		81
93	12/16/2009		WPIR	Issue Notification Mailed			0
91	11/20/2009		EFDC	Export to Final Data Capture			0
90	11/17/2009		D1935	Dispatch to FDC			0
89	11/17/2009		PILS	Application Is Considered Ready for Issue			0
87	11/09/2009		MPTDI	Mail-Petition Decision - Dismissed			0
86	11/09/2009		PTDI	Petition Decision - Dismissed			0
88	08/24/2009		N271	Response to Amendment under Rule 312			0
85	08/24/2009		MM327	Mail Miscellaneous Communication to Applicant			0
84	08/21/2009		M327	Miscellaneous Communication to Applicant - No Action Count			ō
83	08/14/2009		PET.	Petition Entered			ō
82	08/14/2009		A.NA	Amendment after Notice of Allowance (Rule 312)		120	0
B1	08/14/2009		N084	Issue Fee Payment Verified			0
80	08/14/2009		BIG.	Statement Filed Indicating a Loss of Entitlement to Small Entity Status			0
79	08/14/2009		IFEE	Issue Fee Payment Received			0
78	08/07/2009		CRFT	Sequence Forwarded to Pubs on Tape			0
77	07/20/2009		EIDC	Export to Initial Data Capture			0
76	07/17/2009		MN/=.	Mail Notice of Allowance			0
75	07/16/2009		IREV	Issue Revision Completed			0
74	07/16/2009		DVER	Document Verification			0
73	07/16/2009		N/=.	Notice of Allowance Data Verification Completed			0
72	07/16/2009		CNTA	Allowability Notice			o
55	06/30/2009		FWDX	Date Forwarded to Examiner			o
53	06/30/2009		ABN9	Disposal for a RCE / CPA / R129			ō
58	06/25/2009		IDSC	Information Disclosure Statement considered			o
56	06/25/2009		EIDS.	Electronic Information Disclosure Statement			ō
54	06/25/2009		RCEX	Request for Continued Examination (RCE)			o
52	06/25/2009		WIDS	Information Disclosure Statement (IDS) Filed			ō
51	06/25/2009		BRCE	Workflow - Request for RCE - Begin			o
92.5	06/24/2009	06/14/2009		PTA 36 Months	10		ŏ
50	06/16/2009	,,	FIDC	Finished Initial Data Capture	25		0
59	06/01/2009		CRFT	Sequence Forwarded to Pubs on Tape			o o
58	05/22/2009		EIDC	Export to Initial Data Capture			Ŏ
57	05/19/2009		MEX.A	Mail Examiner's Amendment			0
6	05/19/2009	05/05/2009		Mail Notice of Allowance	14		42
 i5	05/11/2009	-3, 43, 2009	N/=.	Notice of Allowance Data Verification Completed	- 2		0
4	05/11/2009		IREV	Issue Revision Completed			0
;3	05/11/2009		DVER	Document Verification			0
i2	05/11/2009		EX.A	Examiner's Amendment Communication			0
i1	05/11/2009		CNTA	Allowability Notice			0
43	02/27/2009		FWDX	Date Forwarded to Examiner			0
43 42	01/05/2009	09/02/2008					-
42 41	12/23/2008	53,52,2008	NINA	Response after Non-Final Action		125	38
39		_	FWDX	Mail Notice of Informal or Non-Responsive Amendment			0
,,,	10/18/2008	•	PWUX	Date Forwarded to Examiner			0

Informal or Non-Responsive Amendment after Examiner Action

Change in Power of Attorney (May Include Associate POA)

Response after Non-Final Action

Correspondence Address Change

33	06/02/2008	08/14/2007	MCTNF	Mail Non-Final Rejection	<u> 293</u>	-1
32	05/27/2008		CTNF	Non-Final Rejection		0
24	07/05/2007		PG-ISSUE	PG-Pub Issue Notification		0
23	04/20/2007		DOCK	Case Docketed to Examiner in GAU		0
22	04/20/2007		TSSCOMP	IFW TSS Processing by Tech Center Complete		0
21	04/20/2007		C.AD	Correspondence Address Change		0
16	04/17/2007		OIPE	Application Dispatched from OIPE	•	0
15	04/16/2007		OIPE	Application Dispatched from OIPE		0
14	03/29/2007		PGPC	Sent to Classification Contractor		0
13	03/29/2007		COMP	Application Is Now Complete		0
3	03/19/2007		CRFE	CRF Is Good Technically / Entered into Database		0
28	11/16/2006		IDSC	Information Disclosure Statement considered		0
20	11/16/2006		RCAP	Reference capture on IDS		0
9.7	11/16/2006		M844	Information Disclosure Statement (IDS) Filed		0
19	11/16/2006		WIDS	Information Disclosure Statement (IDS) Filed		0
18	08/22/2006		A.PE	Preliminary Amendment		0
2	08/22/2006		FLFEE	Payment of additional filing fee/Preexam		0
10	08/22/2006		SEQLIST	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in		0
•	08/22/2006		CORRSPEC	, Applicant has submitted a new specification to correct Corrected Papers problems		0
,	06/22/2006		INCD	Notice MailedApplication IncompleteFiling Date Assigned		0
;	06/20/2006		L128	Cleared by L&R (LARS)		0
•	06/20/2006		L198	Referred to Level 2 (LARS) by OIPE CSR		0
3	06/20/2006		CLSS	CASE CLASSIFIED BY OIPE		0
2	06/19/2006		SCAN	IFW Scan & PACR Auto Security Review		0
17	06/14/2006		A.PE	Preliminary Amendment		0
11	06/14/2006		CLAIM	Claim Preliminary Amendment		0
1	06/14/2006		IEXX	Initial Exam Team nn		0

Doc Code: PET.AUTO		PTO/SB/64 U.S. Patent and Trademark Office			
Document Description: Petition auton	natically granted by EFS-Web	Department of Commerce			
Electronic Petition Request	PETITION FOR REVIVAL OF AN APPLICATION UNINTENTIONALLY UNDER 37 CFR 1.137(b)				
Application Number	11452441				
Filing Date	14-Jun-2006				
First Named Inventor	M. Marcus				
Art Unit	2833				
Examiner Name	MICHAEL FRIEDHOFER				
Attorney Docket Number	15155.50				
Title	ELECTROLUMINESCENT LAMP MEMBRANE SWITCH				
United States Patent and Trademark	us any extensions of time actually obtained.	nd proper reply to a notice or action by the after the expiration date of the period set for			
NOTE: A grantable petition requires to (1) Petition fee; (2) Reply and/or issue fee; (3) Terminal disclaimer with discall design applications; (4) Statement that the entire design applications	claimer fee – required for all utility and plant	applications filed before June 8, 1995; and for			
Petition fee					
The petition fee under 37CFR 1.17(m) Applicant claims SMALL ENT					
Applicant is no longer claim	Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).				
Applicant(s) status remains a	Applicant(s) status remains as SMALL ENTITY.				
Applicant(s) status remains as other than SMALL ENTITY.					
Issue Fee and Publication Fee :					
Issue Fee and Publication Fee are not due.					
Issue Fee Transmittal is attached	d				
Drawing corrections and/ or other deficiencies.					

•	Drawing corrections and/ or other deficiencies are not required					
0	I certify, in accordance with 37 CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed on					
0	Drawing corrections and/ or other deficiencies are attached.					
	STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.					
ТН	IIS PORTION MUST BE COMPLETE	D BY THE SIGNATORY OR SIGNATORIES				
l c	I certify, in accordance with 37 CFR 1.4(d)(4) that I am:					
0	An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.					
•	An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.					
0	A sole inventor					
0	A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors.					
0	A joint inventor; all of whom are signing this e-petition.					
0	The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71.					
Signature		/John A. Thomas/				
Na	nme	John A. Thomas				
Registration Number		29980				



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Decision Date: December 27, 2011

In re Application of : DECISION ON PETITION
UNDER CFR 1.137(b)

M. Marcus

Application No: 11452441
Filed: 14-Jun-2006

Attorney Docket No: 15155.50

This is an electronic decision on the petition under 37 CFR 1.137(b), filed December 27, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Allowance and Issue Fee(s) Due. The date of abandonment is the day after the expiration date of the period set for reply in the Notice.

The electronic petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue Fee and the Publication Fee (if necessary); (2) the petition fee as set forth in 37 CFR 1.17 (m); (3) the drawing correction and/or other deficiencies (if necessary); and (4) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being directed to the Office of Data Management.

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

FISH & RICHARDSON P.C. (TC) PO BOX 1022 MINNEAPOLIS MN 55440-1022 MAILED
APR 25 2011
OFFICE OF PETITIONS

In re Patent of Collins : Patent No. 7,875,453 :

Issued: January 25, 2011

Application No. 11/452,502 : ON APPLICATION FOR

Filed: June 14,2006 : PATENT TERM ADJUSTMENT

Atty Docket No. 10847-044001 :

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(d)," filed March 24, 2011. Patentee requests that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two hundred forty-six (246) days.

The petition is **DISMISSED**.

Patentee argues that the Director erred in the calculation of patent term adjustment by failing to include in the B Delay period a period of time that was not "consumed by continued examination of the application." The first Request for Continued Examination (RCE) was filed on April 14, 2009. On September 20, 2010, the Office mailed a Notice of Allowance. Patentee argues no continued examination took place during the 128 day period from September 20, 2010 (the mailing date of the Notice of Allowance) until January 25, 2011 (the date the patent issued). Thus, patentee argues the B Delay period should be 128 days.

Patentee's argument has been considered, but has not been found to be persuasive. Per 35 U.S.C. § 154(b)(1)(B)(i), B Delay does not include "any time consumed by continued examination of the application requested by the applicant under section 132(b)."

Per the language of 37 CFR 1.703(b)(1):

- (b) The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods:
 - The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 132(b) was filed and ending on the date the patent was issued;

As stated above, the number of days beginning on the date a RCE was filed and ending on the issuance date of the patent are not included in the B Delay period. The B Delay in this case is 0 days because the first RCE was filed on April 14, 2009, prior to the start of the three year period on June 15, 2009. The filing of the first RCE cuts off accumulation of any additional period of adjustment for the over three year calculation. All days from the date the first RCE was filed to the date of issuance are not included in the B Delay period, per 37 CFR 1.703(b)(1).

The patent term adjustment remains 118 days, which is the sum of 240 days of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") and 0 days of B Delay, reduced by 122 days of Applicant delay.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley Senior Petitions Attorney

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FISH & RICHARDSON P.C. (TC) PO BOX 1022 MINNEAPOLIS MN 55440-1022

MAILED AUG 2 5 2011 OFFICE OF PETITIONS

In re Patent of Collins : FINAL AGENCY DECISION

Patent No. 7,875,453 : ON

Issue Date: January 25, 2011 : REQUEST FOR RECONSIDERATION

Application No. 11/452,502 : OF

Filed: June 14, 2006 : DECISION ON APPLICATION

Attorney docket: 10847-044001 : FOR

For: DIFFERENTIATION OF MULTI- : PATENT TERM ADJUSTMENT

LINEAGE PROGENITOR CELLS TO

HEPATOCYTES

This is a decision on the "RESPONSE TO DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT" filed June 23, 2011, requesting reconsideration of the decision of April 25, 2011, and requesting that the patent term adjustment determination under 35 U.S.C. § 154(b) in the decision of April 25, 2011, be changed from 118 days to 246 days.

Patentee requests that the decision on this renewed request for reconsideration of patent term adjustment be deferred or delayed until a final decision has been rendered in Abbott
Biotherapeutics Corp. v. Kappos. There is no specific regulatory provision for requesting that a petition under 37 CFR 1.705(d) be held in abeyance.

The request for reconsideration of the decision of April 25, 2011, is granted to the extent that the decision of April 25, 2011, has been reconsidered; however, the request for reconsideration is **DENIED** with respect to making any change in the patent adjustment determination under 35 U.S.C. § 154(b) of 118 days indicated in the decision of April 25, 2011. This decision may be viewed as a final agency action within the meaning of 5 U.S.C. 704 and for purposes of seeking judicial review. See MPEP §1002.02.

BACKGROUND

On January 25, 2011, the above-identified application matured into U.S. Patent No. 7,875,453, with a revised patent term adjustment of 118 days. On March 24, 2011, Patentee timely submitted a petition for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 246 days. On April 25, 2011, the Office mailed a decision indicating the patent term adjustment is 118 days and affording Patentee with a 30 day/1 month period to contest the decision. Patentee timely filed the present petition on June 23, 2011. Patentee maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of a request for continued examination) the Office mailed a Notice of Allowance on September 20, 2010, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 128 day period from September 20, 2010 (the mailing date of the Notice of Allowance) until January 25, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 128 days and be increased from 0 to 128 days. Patentee concludes that the correct patent term adjustment is 246 days (the sum of 240 days of "A delay" and 128 days of "B delay" minus 122 days of Applicant delay).

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
 (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the

Board of Patent Appeals and Interferences or by a Federal court;

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. ,

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

- (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
- (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
- (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
- (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
- (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as O days based on the application having been filed under 35 U.S.C. 111(a) on June 14, 2006 and the patent not having issued as of the day after the three year date, June 15, 2009, and a request for continued examination being filed on April 14, In other words, the 128-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b) 1. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued

¹ Pursuant to 35 U.S.C. 132(b) , 37 CFR 1.114 provides for continued examination of an application, as follows:

⁽a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

⁽¹⁾ Payment of the issue fee, unless a petition under § 1.313 is granted;

Abandonment of the application; or

⁽³⁾ The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

⁽b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a quarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term.

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted 1) "B delay" cannot accrue for days of "A delay" as follows: that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of

the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F.Supp.2d 138 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, inter alia, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses $(i)-(ii)^2$. Clause (i) specifies "any time consumed by

Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no

continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for $\dot{3}$ years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b) (the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in <u>Blacklight Power</u>, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See <u>BlackLight Power</u>, <u>Inc. v. Rogan</u>, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously

been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures³ permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to

Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on April 14, 2009, and the patent issued by virtue of that request on January 25, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on September 20, 2010 and ending on January 25, 2011 is not included in calculating Office delay.

CONCLUSION

Accordingly, the decision on application for patent term adjustment has been reconsidered and the request for additional patent term is DENIED.

The patent term adjustment remains 118 days, as indicated in the decision of April 25, 2011.

Deposit account no. 06-1050 will be refunded the \$200.00 petition fee submitted with the instant petition, as Patentee has previously paid the \$200.00 petition fee on March 24, 2011.

Telephone inquiries specific to this matter should be directed to Shirene Willis Brantley, Senior Petitions Attorney, at (571) 272 - 3230.

Kmight

Director, Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

JOHN C. MCMAHON PO BOX 30069 KANSAS CITY MO 64112 MAILED
NOV 09 2011
OFFICE OF PETITIONS

In re Application of Roger P. Jackson Application No. 11/452,503

Filed: June 14, 2006

Attorney Docket No: 10620

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed November 2, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)" or "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency decision.

In response to a non-Final Office Action mailed December 8, 2010, an amendment was filed on March 14, 2011 (March 8, 2011 certificate of mail). However, in response thereof, a Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed March 21, 2011 which set a one month period for reply. No response having been filed, the application became abandoned. Accordingly, a Notice of Abandonment was mailed October 7, 2011.

Petitioner asserts unavoidable delay in responding to the Notice of Non-Compliant Amendment (37 CFR 1.121) because of non-receipt.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) <u>must</u> be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee as set forth in § 1.17(I);
- (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
- (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (c) of this section.

This petition lacks item (3) above.

SHOWING OF UNAVOIDABLE DELAY

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.¹

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure or mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.²

Petitioner has not proven non-receipt and neither has petitioner presented sufficient evidence to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a).

ALTERNATIVE VENUE

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(b)³,

ln re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

²Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

³Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) <u>must</u> be accompanied by:

which now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

It should be noted that if petitioner chooses to file a petition under the unintentional standard the fees due would be those pursuant to 37 CFR 1.17(m) as the fees submitted with the instant petition cannot be applied as petitioner has already received consideration under the unavoidable standard.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions

Commissioner for Patents

P.O. Box 1450

Alexandria VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Senior Petitions Attorney

Office of Petitions

⁽¹⁾ the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof

⁽²⁾ the petition fee as set forth in 37 CFR 1.17(m);

⁽³⁾ a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

⁽⁴⁾ any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

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JOHN C. MCMAHON PO BOX 30069 KANSAS CITY MO 64112

JAN 26 2012

OFFICE OF PETITIONS

In re Application of Roger P. Jackson

Application No. 11/452,503

Filed: June 14, 2006

Attorney Docket No: 10620

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(a)¹, filed January 17, 2012 or in the alternative, under 37 CFR 1.137(b)², to revive the above-identified application.

The petition under 37 CFR 1.137(a) is **DISMISSED**. The petition under 37 CFR 1.137(b) is **GRANTED**.

In response to a non-Final Office Action mailed December 8, 2010, an amendment was filed on March 14, 2011 (March 8, 2011 certificate of mail). However, in response thereof, a Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed March 21, 2011 which set a one month period for reply. No response having been filed, the application became abandoned. Accordingly, a Notice of Abandonment was mailed October 7, 2011. A petition under 37 CFR 1.137(a) was filed November 2, 2011 and dismissed in a decision mailed November 9, 2011 because while petitioner asserted unavoidable delay in responding to the Notice of Non-

¹A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by:

⁽¹⁾ the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

⁽²⁾ the petition fee as set forth in § 1.17(I);

⁽³⁾ a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (c) of this section.

²Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) <u>must</u> be accompanied by:

⁽¹⁾ the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

⁽²⁾ the petition fee as set forth in 37 CFR 1.17(m);

⁽³⁾ a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

Compliant Amendment (37 CFR 1.121) because of non-receipt, petitioner had not proven non-receipt and neither has petitioner presented sufficient evidence to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a).

As was with the first petition, petitioner has not presented corroborating evidence to prove non-receipt and neither has petitioner presented sufficient evidence to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a). The statement of non-receipt is not enough to substantiate the claim of non-receipt.

With respect to the petition to revive under the unintentional standard, the petition fee in the amount of \$930.00 has been applied. All other requirements having been met, this matter is being referred to Technology Center 3775 for appropriate action on the amendment filed November 2, 2011.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Senior Petitions Attorney

Office of Petitions



Commissioner for Patents
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SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938
MINNEAPOLIS MN 55402

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JAN 03 2012
OFFICE OF PETITIONS

In re Application of

Michelle ENDENBORG et al.

Application No. 11/452,615

Patent No. 7,478,756

Filed: June 14, 2006

Attorney Docket No. 1569.014US2

NOTICE UNDER 37 CFR. 1.28(c)

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to Michelle R. Eason at (571) 272-4231.

Thurman K. Page Petitions Examiner

Office of Petitions



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QUALCOMM INCORPORATED 5775 MOREHOUSE DR. SAN DIEGO CA 92121 MAR 282U11

OFFICE OF PETITIONS

In re Application of

BARRIAC, et al

Application No. 11/452,723

Filed: June 13, 2006

Docket No. 050461

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 14, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, July 8, 2010, which set a shortened statutory period for reply of **three (3) months**. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 9, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$1620; and (3) and the required statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1110 extension of time fee submitted with the petition on January 14, 2011, was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's Deposit Account 17-0026.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

All other inquiries should be directed to the Technology Center at (571) 272-2400.

This application is being referred to Technology Center AU 2461 for appropriate action by the Examiner in the normal course of business.

/Diane C. Goodwyn/ Diane C. Goodwyn Petitions Examiner Office of Petitions



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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

In re Application of

Trung T. Doan et al.

Application No. 11/452,830

Filed: June 13, 2006

Attorney Docket No. MI22-3264

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 25, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before February 22, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed November 22, 2010. Accordingly, the date of abandonment of this application is February 23, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of \$1510 and the publication fee of \$300, (2) the petition fee of \$1620; and (3) a proper statement of unintentional delay. Accordingly, the payment of Issue and Publication fees is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to the Office of Data Management for processing into a patent.

Ramesh Krishnamurthy

Petitions Examiner
Office of Petitions



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No.

GENENTECH, INC. 1 DNA WAY SOUTH SAN FRANCISCO CA 94080

MAILED
JUN 2 1 2011
OFFICE OF PETITIONS

In re Application of

Dennis et al. : DECISION ON APPLICATION

Application No. 11/452,990 : FOR

Filed: June 14, 2006 : PATENT TERM ADJUSTMENT

Atty Docket No. P5040R1

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b) filed March 11, 2011. Applicants request that the initial determination of patent term adjustment be corrected from three hundred fourteen (314) days to five hundred ninety-nine (599) days.

The request for review of the initial determination of patent term adjustment (PTA) is **DISMISSED**.

On December 14, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 314 days. Applicants timely dispute the reduction of 285 days associated with the filing of an information disclosure statement (IDS) on December 21, 2009. Applicants do not dispute that the IDS was filed 285 days after the filing of their response to the restriction requirement. Rather, applicants maintain that the IDS was not filed under circumstances that constitute a failure to engage and that there was no actual delay in prosecution.

37 CFR 1.704(c) provides, in pertinent part, that:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the

following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

In this instance, after the filing of a response on March 11, 2009, on December 21, 2009, applicants filed an Information Disclosure Statement (IDS). The record supports a conclusion that the IDS was not expressly requested by the examiner. Further, the IDS did not include a 1.704(d) statement. Accordingly, the PTA was properly reduced by 285 days.

In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is THREE HUNDRED FOURTEEN (314) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the application.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson

Senidr Petitions Attorney

Office of Petitions

Doc Code: PET.PTA.RCAL

Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (01-10)

Approved for use through 02/28/2011. OMB 0651-0020 U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH*

Attorney Docket 56681/W112 Patent Number: 7,662,152 Number: Filing Date Issue Date: 02/16/2010 (or 371(b) or (f) Date): 06/13/2005

First Named Shiva Sharareh

Title: CATHETER WITH MULTI PORT TIP FOR OPTICAL LESION EVALUATION

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature ###	Date 08/13/2010		
Name (Print/Typed) Lauren E. Schneider	Registration Number 63,712		
Note: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*.			
*Total of forms are submitted.			

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
- 2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
- A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/19/2010

CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068

Applicant: Shiva Sharareh

Patent Number : 7662152

Issue Date : 02/16/2010

Application No: 11/453,188
Filed : 06/13/2006

: DECISION ON REQUEST FOR : RECALCULATION of PATENT

: TERM ADJUSTMENT IN VIEW : OF WYETH AND NOTICE OF INTENT TO

: OF WYETH AND NOTICE OF INTENT TO : ISSUE CERTIFICATE OF CORRECTION

:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 706 days. The USPTO will suasponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

Doc Code: PET.PTA.RCAL

Document Description: Request for Recalculation in view of Wyeth

Approved for use through 02/28/2011. OMB 0651-0020

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH*

IN VIEW OF WIEI		
Attorney Docket Number: 60426-795 PUS1	Patent Number: 7668259	
Filing Date (or 371(b) or (f) Date): 06/14/2006	Issue Date: 02/23/2010	
First Named Inventor: David Reimus		
Title: COMBINED RKE + TPM DUTY CYCLE METHODOLOGY PASE		

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S

SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature /John M. Siragusa/	_{Date} 8-23-2010		
Name (Print/Typed) John M. Siragusa	Registration Number 46174		
Note: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*.			
*Total of forms are submitted.			

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 09/13/2010

CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009

Applicant : David Reimus : DECISION ON REQUEST FOR Patent Number: 7668259 : RECALCULATION of PATENT : TERM ADJUSTMENT IN VIEW Issue Date : 02/23/2010

Application No: 11/453,208 : OF WYETH AND NOTICE OF INTENT TO Filed : 06/14/2006 : ISSUE CERTIFICATE OF CORRECTION

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 841 days. The USPTO will sua sponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

WOLF GREENFIELD & SACKS, P.C. 600 ATLANTIC AVENUE BOSTON MA 02210-2206

MAILED

In re Application of

Anderson et al.

Application No. 11/453222

Filing or 371(c) Date: 06/14/2006

Attorney Docket Number:

M1237.70001US02

AUG 3 0 2010

OFFICE OF PETITIONS

ON PETITION

This is a decision on the "Petition Requesting Withdrawal of Holding of Abandonment", filed March 6, 2009. The petition is properly treated under 37 CFR § 1.181(a).

This Petition is hereby granted.

The above-identified application became abandoned for failure to timely and properly reply to the Notice to File Missing Parts of Nonprovisional Application, mailed July 7, 2006. The Notice set a two (2) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No response having been received, the application became abandoned September 8, 2006. A Notice of Abandonment was mailed February 9, 2009.

Applicant's Assertion

Applicant files the present petition and asserts that a timely response to the Notice, including a one month extension of time request and fee, was filed on October 6, 2006, in accordance with 37 CFR 1.8, and received by this Office as evidenced by the copy of Applicant's return-receipt postcard. In support of this assertion, Applicant files a copy of the Response, and a copy of his return-receipt postcard acknowledging receipt by this Office of a the Response to the Notice on October 10, 2006.

37 CFR 1.8

A review of the Response reveals that it contained a Certificate of Mailing under 37 CFR 1.8, certifying that the Amendment was mailed to this Office on October 6, 2006. The Certificate of Mailing was executed by Heather Mariacher. 37 CFR 1.8(b)(3) requires a statement which attests on a personal knowledge basis to the timely mailing of the Response; however, a statement from Ms. Heather Mariacher has not been provided.

MPEP 503

The MPEP 503 provides that "[a] postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." MPEP § 503. In this instance, Applicant's return receipt postcard acknowledges receipt by this Office of the Response to the Notice on October 10, 2006.

37 CFR 1.6

A review of the application file reveals that the due date for reply to the Notice, October 7, 2006, fell on a Saturday, and Monday, October 9, 2009, was a Federal Holiday. Applicant's return receipt postcard acknowledges receipt by this Office of the Response to the Notice on the next succeeding business day, October 10, 2006. As such, and in accordance with 37 CFR 1.6, the correspondence is considered timely as it was taken on the next succeeding business day. See, MPEP 505¹.

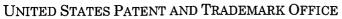
The application will be referred to the Office of Patent Application Processing for processing of the Response, and for continued processing in the normal course of business.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DW/

Derek Woods Attorney Office of Petitions

¹ The MPEP 505 states: The United States Patent and Trademark Office (Office) stamps papers and fees with the date of their receipt in the Office. The stamp is referred to as the "Office Date" stamp. When the last day for taking any action or paying any fee in the Office falls on a Saturday, Sunday, or a Federal holiday within the District of Columbia, the action or the fee is considered timely if the action is taken or the fee is paid on the next succeeding business day.





Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

CHAPIN INTELLECTUAL PROPERTY LAW, LLC WESTBOROUGH OFFICE PARK 1700 WEST PARK DRIVE, SUITE 280 WESTBOROUGH MA 01581

MAILED

JAN 04 2011

OFFICE OF PETITIONS

In re Application of:

Peter MATTEO et al.

Application No. 11/453,273 : DECISION DISMISSING

Filing Date: June 14, 2006

PETITION UNDER

Attorney Docket No.: 506036-US-NP

37 CFR § 1.183

1 No.: 500050-05-NF

(Patakula)

This Decision is in response to the "Petition Under 37 C.F.R. § 1.183, filed October 12, 2010, to waive of the requirements of 37 CFR 1.131 to the extent that it requires that all of the named inventors execute the declaration filed there under.

The petition is **dismissed**.

The application as-filed identified five inventors as the inventive entity: Peter Matteo (Matteo), Balaji Patakula (Patakula), Sami Qutub (Qutub), Rafal Sitkowski (Sitkowski), and David Sokoler (Sokoler). Applicant filed a Combined Declaration of Joint Inventors Under 37 CFR 1.131, executed by only Matteo.

Applicant files the present petition and states that inventors Patakula, Qutub, Sitkowski, and Sokoler are unavailable to sign the Declaration under 37 CFR 1.131.

MPEP 715.04, Swearing back of Reference, Affidavit or Declarant Under 37 CFR 1.131, provides

The following parties may make an affidavit or declaration under 37 CFR 1.131:

- (A) All the inventors of the subject matter claimed.
- (B) An affidavit or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection. For example, one of two joint inventors is accepted where it is shown that one of the joint inventors is the sole inventor of the claim or claims under rejection.
- (C) If a petition under 37 CFR 1.47 was granted or the application was accepted under 37 CFR 1.42 or 1.43, the affidavit or declaration may be signed by the 37 CFR 1.47 applicant or the legal representative, where appropriate.
- (D) The assignee or other party in interest when it is not possible to produce the

affidavit or declaration of the inventor. Ex parte Foster, 1903 C.D. 213, 105 O.G. 261 (Comm'r Pat. 1903).

Affidavits or declarations to overcome a rejection of a claim or claims must be made by the inventor or inventors of the subject matter of the rejected claim(s), a party qualified under 37 CFR 1.42, 1.43, or 1.47, or the assignee or other party in interest when it is not possible to produce the affidavit or declaration of the inventor(s). Thus, where all of the named inventors of a pending application are not inventors of every claim of the application, any affidavit under 37 CFR 1.131 could be signed by only the inventor(s) of the subject matter of the rejected claims.

Where one or more of the named inventors of the subject matter of the rejected claim(s) (who had originally signed the oath or declaration for patent application under 37 CFR 1.63) is now unavailable to sign an affidavit or declaration under 37 CFR 1.131, the affidavit or declaration under 37 CFR 1.131 may be signed by the remaining joint inventors provided a petition under 37 CFR 1.183 requesting waiver of the signature of the unavailable inventor be submitted with the affidavit or declaration under 37 CFR 1.131. Proof that the non-signing inventor is unavailable or cannot be found similar to the proof required for a petition under 37 CFR 1.47 must be submitted with the petition under 37 CFR 1.183 (see MPEP § 409.03(d)). Petitions under 37 CFR 1.183 are decided by the Office of Petitions (see MPEP § 1002.02(b)).

MPEP 409.03(d) states:

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made. The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47.

Furthermore, the fact that an inventor is hospitalized and/or is not conscious is not an acceptable reason for filing under 37 CFR 1.47. 37 CFR 1.43 may be available under these circumstances. See MPEP § 409.02. Such a petition under 37 CFR 1.47 will be dismissed as inappropriate.

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included in the statement of facts. It is important that the statement contain facts as opposed to conclusions.

In discussing waiver requirements under 37 CFR 1.183, the Office is guided by proof similar to that required when an Applicant is unavailable. See MPEP 409.03(d), *supra*. In this instance, petitioner asserts that inventors Patakula, Qutub, Sitkowski, and Sokoler are unavailable. However, the applicable statute (35 U.S.C.§ 116) requires that a "diligent effort" have been

expended in attempting to find or reach the non-signing inventor. See MPEP 409.03(a). The showing currently fails to demonstrate, with a documented showing, that a diligent effort was made to find or locate non-signing inventors Patakula, Qutub, Sitkowski, and Sokoler, such that the declaration can be accepted. Where inability to find or locate a named inventor(s) is alleged, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made to locate the inventor.

Petitioner has not demonstrated that all efforts were expended in trying to locate non-signing inventors Patakula, Qutub, Sitkowski, and Sokoler. In this regard, petitioner should, at the very least, conduct a search of the regional or national registry(s). The results of such search should be made in any future petition for reconsideration. See MPEP 409.03(d). Additionally, petitioner should state whether he has access to inventor Money's personnel records and, if so, what does inspection of the records reveal as to a current address, forwarding address, or an address of the nearest living relative? What does inspection of the phone directories for those address locations reveal? Further, the petition fails to indicate that correspondence was ever mailed unsuccessfully to the inventor's last known address. Therefore, at the very least, petitioner should mail correspondence to the inventor's last known address, return receipt and/or forwarding address requested. If a forwarding address is provided, petitioner should then mail a complete copy of the application papers (specification, claims, drawings, oath, etc.) to Patakula, Qutub, Sitkowski, and Sokoler's addresses, return receipt requested, along with a cover letter of instructions which includes a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. If the papers are returned and all other attempts to locate or reach the inventor, e.g., through personnel records, co-workers, E-mail, the Internet or the telephone, etc., continue to fail, then applicant will have established that the inventor cannot be reached after diligent effort or has refused to join in the application. The statements of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein and should be accompanied by documentary evidence in support of the statement of facts. It is important that the forthcoming communication contain statements of fact as opposed to conclusions.

A petition under 37 CFR 1.183 requires the petition fee of \$400 set forth in 37 CFR 1.17(f). Accordingly, the petition fee of \$400 is being charged to petitioner's Deposit Account No. 50-3735

Further correspondence with respect to this matter should be addressed as follows:

By mail:Mail Stop Petition
Director for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX:(571)273-8300 Attn: Office of Petitions

By hand:Customer Service Window Mail Stop Petition Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-7099.

Petitions Examiner
Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

CHAPIN INTELLECTUAL PROPERTY LAW, LLC WESTBOROUGH OFFICE PARK 1700 WEST PARK DRIVE, SUITE 280 WESTBOROUGH MA 01581

MAILED

JUL 19 2011

OFFICE OF PETITIONS

In re Application of

Peter MATTEO et al.

Application No. 11/453,273

Filed: June 14, 2006

Attorney Docket No. AVA08-14

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 19, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed June 9, 2010, which set a shortened statutory period for reply of three (3) months. A one (1) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on October 10, 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1).

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of June 9, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal and appeal fee required by 37 CFR 41.20(b)(1), an amendment under 37 CFR 1.116 that cancels all rejected claims or otherwise *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). Since the amendment submitted does not *prima facie* place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee), an RCE, or the filing of a continuing application under 37 CFR 1.53(b). See the enclosed PTOL-303.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to Andre Boyce at (571) 272-6726, or in his absence, the undersigned at (571) 272-7099.

Petitions Examiner
Office of Petitions

Encl.: PTOL-303

	Application No.	Applicant(s)		
Advisory Action	11/453,273	MATTEO ET AL.		
Before the Filing of an Appeal Brief	Examiner	Art Unit		
	OLEG ASANBAYEV	2614		
The MAILING DATE of this communication appe	ars on the cover sheet with the o	correspondence address		
THE REPLY FILED 19 May 2011 FAILS TO PLACE THIS APP				
1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:				
 a) The period for reply expiresmonths from the mailing date of the final rejection. b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO 				
MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).			
Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL				
 The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 				
3. X The proposed amendment(s) filed after a final rejection,				
(a) They raise new issues that would require further co		TE below);		
(b) ☐ They raise the issue of new matter (see NOTE belo (c) ☒ They are not deemed to place the application in bet	w); ter form for anneal by materially re	ducing or simplifying the issues for		
appeal; and/or	ter form for appear by materially re	ducing of our purying the recess re-		
(d) They present additional claims without canceling a	corresponding number of finally rej	ected claims.		
NOTE: (See 37 CFR 1.116 and 41.33(a)). 4. The amendments are not in compliance with 37 CFR 1.11	24. See attached Nation of Non Co	moliant Amendment (PTOL-324)		
=		impliant Amendinent (1 101-02-7).		
6. Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the				
non-allowable claim(s). 7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.				
The status of the claim(s) is (or will be) as follows: Claim(s) allowed:				
Claim(s) objected to:				
Claim(s) rejected: 1,3-12 and 14-24. Claim(s) withdrawn from consideration:				
AFFIDAVIT OR OTHER EVIDENCE				
8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).				
9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).				
10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER				
11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.				
12. Note the attached Information <i>Disclosure Statement</i> (s). (PTO/SB/08) Paper No(s) 13. Other:				
	/OLEG ASANBAYEV/ Examiner, Art Unit 2614			

Application No. 11/453,273

Continuation Sheet (PTO-303)

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that Final Office Action issued on 6/9/2010 was not proper because, applicant's amendment submitted on 3/22/2010 moved a limitation from claim 2 into claim 1. Examiner respectfully disagrees. Even though amended claim 1 incorporated the limitations of dependent claim 2, amended claim 1 also included a new limitation "selecting a particular wait treatment from a plurality of wait treatments," which changed the scope of the claim and necessitated a new ground of rejection. Therefore, final rejection was proper. See MPEP 706.07 [R-3].

Applicant's main argument for claims allowability is that Affidavit filed on 10/12/2010 under 37 CFR 1.131 is sufficient to overcome the rejection by antedating the Shaffer (2007/0211879) reference: Examiner position is that 1.131 Affidavit is not sufficient to overcome Shaffer. The Affidavit lacks inventors signatures as required by 37 CFR 1.131 and Applicant's petition to overcome the signature requirement was dismissed by the Office of Petitions, see Petition Decision (01/04/11). Therefore, the rejection of the claims is maintained.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

CHAPIN INTELLECTUAL PROPERTY LAW, LLC WESTBOROUGH OFFICE PARK 1700 WEST PARK DRIVE, SUITE 280 WESTBOROUGH MA 01581

MAILED
OCT 2 6 2011
OFFICE OF PETITIONS

In re Application of

Peter MAETTEO et al.

Application No. 11/453,273

Filed: June 14, 2006

Attorney Docket No. AVA08-14

ON PETITION

This is a decision on this renewed petition under 37 CFR 1.137(b), filed October 7, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office Action mailed June 9, 2010 which set a shortened statutory period for reply of three (3) months. A one (1) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on October 10, 2010.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment, Request for Continued Examination, and the filing fee of \$930; (2) the petition fee of \$1620; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office Action of June 9, 2010 is accepted as having been unintentionally delayed.

Application No. 11/453,273

Telephone inquiries concerning this decision should be directed to Wilson Lee at (571) 272-1824 or in his absence, the undersigned at (571) 272-7099.

The application file is being referred to Technology Center AU 2614 for appropriate action on the concurrently filed amendment.

Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

CHAPIN INTELLECTUAL PROPERTY LAW, LLC WESTBOROUGH OFFICE PARK 1700 WEST PARK DRIVE, SUITE 280 WESTBOROUGH MA 01581

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OFFICE OF PETITIONS

In re Application of

Peter MATTEO et al.

Application No. 11/453,273 : O

Filed: June 14, 2006

Attorney Docket No. AVA08-14

ON PETITION

This is in response to the renewed petition under 37 CFR 1.183, filed May 19, 2011, requesting waiver of the requirements of 37 CFR 1.131 to the extent that it requires that all of the named inventors execute the declaration filed there under.

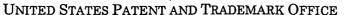
The petition is granted to the extent infra.

Petitioner asserts that, while all of the named inventors contributed to the conception of the claimed invention which is under rejection, only Peter Matteo, Balaji Patakula, and Sami Qutub have agreed to execute the declaration under 37 CFR 1.131 in support of establishing conception of the claimed invention prior May 7, 2006.

As noted in MPEP 715.04, an adequate showing may lead to acceptance of a declaration under 37 CFR 1.131 executed by less than all of the named inventors of the claimed subject matter in question. Under the facts presented, it is agreed that justice requires waiver of the rules to the extent that they require Rafal Sitkowski and David Sokoler to declare. However, the favorable decision herein does not relieve applicants from their burden to establish that the invention was completed before the date of the reference and that the claimed invention was the product of the joint inventors. See In re Carlson, 79 F.2d. 900, 27 USPQ 400 (CCPA 1935).

Telephone inquiries regarding this decision should be directed the undersigned at (571) 272-7099.

Petitions Examiner
Office of Petitions





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MAILED

SEP 23 2010

OFFICE OF PETITIONS

PERKINS COIE LLP P.O. BOX 1208 SEATTLE, WA 98111-1208

In re Application of

Arai et al.

Application No. 11/453,301

Filed: June 13, 2006

Attorney Docket No. 30126-8009.US02

DECISION ON PETITION TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 3, 2010.

The request is APPROVED.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office will require the practitioner(s) to certify that he, she or they have: (1) given reasonable notice to the client, prior to the expiration of the reply period, which the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any replies that may be due and the time frame within which the client must respond, pursuant to 37 CFR 10.40 (c).

The request was signed by R. Michael Ananian, on behalf of the practitioners of record associated with Customer No. 22918.

Customer Number 22918 has been withdrawn as attorney of record. Applicant is reminded that there is no attorney of record at this time.

There is an outstanding Office action mailed September 22, 2010 that requires a reply from the applicant.

As no change of correspondence address was indicated therefore, the address will remain unchanged.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6059. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Alicia Kelley Petitions Examiner

Office of Petitions



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. ROLL 1450 Alexandria, Virginia 22313-1450

APPLICATION NUMBER

FILING OR 371(C) DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

11/453,301

06/13/2006

Daniel T. Arai

30126-8009.US02

CONFIRMATION NO. 4135
POWER OF ATTORNEY NOTICE

22918
PERKINS COIE LLP
P.O. BOX 1208
SEATTLE, WA 98111-1208

Date Mailed: 09/24/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/03/2010.

 The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/atkelley/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

WOLF GREENFIELD & SACKS, P.C. 600 ATLANTIC AVENUE BOSTON MA 02210-2206

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APR 222011
OFFICE OF PETITIONS

In re Application of

Haas et al.

Application No. 11/453,319 : ON APPLICATION FOR

Filed: June 14, 2006 : PATENT TERM ADJUSTMENT

Docket No. A0892.70000US03 :

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d), filed March 25, 2011. The petition will be treated under 37 CFR § 1.705(b). Applicants submit that the patent term adjustment to be indicated on the patent is one thousand one hundred eighty-four (1184) days, not nine hundred sixty (960) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction partly on the basis that the Office will take in excess of three years to issue this patent.

In addition, applicants disclose that the Office failed to enter 28 days of Applicant delay.

To the extent that applicants request reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). This is true even in this instance where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or Applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a

determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent or even the filing date of the request for continued examination is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee. 1

To the extent that applicants otherwise request correction of the initial determination of patent term adjustment (PTA), the application for patent term adjustment is **DISMISSED**.

Applicants disclose that the PAIR calculations for the application do not take into account 28 days of Applicant delay. However, applicants do not specify on what basis they make the assertion. The undersigned assumes it is based on the perceived

For example, if an applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the \$1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

delay in responding to the restriction requirement, mailed March 31, 2010.

37 CFR 1.704(b) provides, in pertinent part, that:

An applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

If applicants' assertion that a 28 day reduction should be entered is based upon their filing of an election on May 28, 2010 to the restriction requirement, mailed March 31, 2010, no reduction pursuant to § 1.704(b) is in order. As stated above, the shortened statutory period for reply that is set in the Office action has no effect on the three-month period set forth in 37 CFR 1.704(b). The restriction requirement was mailed on March 31, 2010 and a response was filed on Máy 28, 2010, which is within three months of the mail date of the March 31, 2010 restriction requirement. Accordingly, no reduction was entered.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance remains **nine** hundred sixty (960) days -- 960 days of Office delay minus 0 days of Applicant delay.

The Office acknowledges receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.

Sherene Willis Brantley
Shirene Willis Brantley
Senior Petitions Attorney

Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

	<u> </u>	ETTI IOATE OF COMMECTION		
		Paper No .:20110620BB		
DATE	: June 20, 2011			
TO SPE O	F: ART UNIT 1626			
SUBJECT	: Request for Certificate of Correction	on on Patent No.: 7,598,391		
A response	is requested with respect to the accompa	anying request for a certificate of correction.		
Certificate	nplete this form and return with file, wies of Correction Branch - ST (South ion 7590 - Tel. No. (703) 305-8309	•		
read as sho		Office and/or Applicant's errors, should the patent w matter should be introduced, nor should the scope or		
Thank You	Thank You For Your Assistance Certificates of Correction Branch			
•	st for issuing the above-identified of on on the appropriated box.	correction(s) is hereby:		
\boxtimes .				
	Approved in Part	Specify below which changes do not apply.		
_ I	Denied	State the reasons for denial below.		
Comments	S:			
		oh K. McKane/ visory Patent Examiner, Art Unit 1626		

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

February 28, 2011

Pennington, Moore, Wilkinson, Bell & Dunbar, P.A. 2nd Floor 215 S. Monroe Street Post Office Box 10095 Tallahassee FL 32302-2095

In re Application of

David G. Lebow : **DECISION ON PETITION**

Application No. 11453405 :

Filed: 06/15/2006 : *ACCEPTANCE OF COLOR*

Attorney Docket No. : DRAWINGS

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) June 15, 2006.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

- 1. The fee set forth under 37 C.F.R. 1.17(h),
- 2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
- 3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is <u>GRANTED</u>.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/ Office of Data Management Publications Branch



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

LAW OFFICES OF ANDREW SCHROEDER P.O. Box 6731 Santa Maria CA 93454

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NOV 3 0 2010

OFFICE OF PETITIONS

In re Application of

Monty Cole

Application No. 11/453,469

Filed: June 14, 2006

Attorney Docket No. ISQ010MC

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 18, 2010.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request cannot be approved because the Request for Withdrawal as Attorney, PTO/SB/83 form is incomplete. The second page of the request which shows the forwarding address information was omitted.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to Terri Johnson at 571-272-2991.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

WYATT, TARRANT & COMBS, LLP 1715 AARON BRENNER DRIVE SUITE 800 MEMPHIS TN 38120-4367

MAILED SEP 0 6 2011

OFFICE OF PETITIONS

In re Application of

Brian G. Morin

Application No. 11/453,502

Filed: June 15, 2006

Attorney Docket No. ILX-8

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 30, 2011.

The request is **NOT APPROVED.**

The Office will no longer accept address changes to a new practitioner or law firm filed with a Request, absent the filing of a power of attorney to the new representative. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor.

Accordingly, the request to withdraw from record cannot be approved because a proper forwarding address was not provided. The request to change the correspondence address should be that of the: (1) the first named inventor; or (2) an assignee of the entire interest under 37 C.F.R 3.71, who has properly intervened. If an assignee has intervened in this application then a Statement under 37 CFR 3.73(b), or a copy of the actual assignment, must be submitted with a renewed request.

Our records indicate that the current assignee of record is Innegrity, LLC. The change of correspondence on the request is different from our records. At this time we can not accept this address change until further notified by the applicant.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-4618.

/Kimberly Inabinet/

Kimberly Inabinet Petitions Examiner Office of Petitions

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/453,787	06/15/2006	Tyler Jacks	01997/559002	6820
21559	7590 08/23/2010		EXAM	INER
CLARK & EL 101 FEDERA			BARNHART, LORA ELIZABETH	
BOSTON, MA 02110			ART UNIT	PAPER NUMBER
			1651	
			NOTIFICATION DATE	DELIVERY MODE
			NOTIFICATION DATE	
			08/23/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentadministrator@clarkelbing.com



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

AUG 2 0 2010

CLARK & ELBING LLP 101 FEDERAL STREET BOSTON MA 02110

In re Application of:

Jacks et al.

Serial No.: 11/453,787

453,787

finality of the Office action of April 23, 2010 be withdrawn.

Filed: June 15, 2006

Attorney Docket No.: 01997/559002

This is in response to the petition under 37 CFR § 1.181, filed June 23, 2010, requesting that the

: PETITION DECISION

BACKGROUND

The examiner mailed a non-final Office action on July 14, 2009 setting a three month statutory limit for reply. At the time of this non-final Office action, claims 1-35 were pending. The examiner rejected claims 11-14 and withdrew claims 1-10 and 15-35 from consideration. The examiner rejected claims 11-14 under 35 USC 112, first paragraph, as failing to comply with the written description requirement. Claims 11 and 12 were rejected under 35 USC 102 (b) as being anticipated by Hodson taken in light of Kim et al. Claims 11 and 12 were rejected under 35 USC 102 (a) as being anticipated by Yang et al. Claims 13 and 14 were rejected under 35 USC 102 (b) as being anticipated by or, in the alternative, under 35 USC 103 (a) over Hodson taken in light of Kim et al.

In reply to the non-final Office action of July 14, 2009, applicants filed a response on January 14, 2010. The response submitted by applicants included remarks, arguments traversing the rejections made in the non-final Office action, amendments to the claims, and new claims 36-43.

On April 23, 2010, the examiner mailed a final Office action setting a three month statutory limit for reply. At the time of this final Office action, claims 1-22 and 31-43 were pending and claims 11-14 and 36-43 were rejected. Claims 11-14 and 36-43 were newly rejected under 35 USC 112, second paragraph, as indefinite. Claims 11-14 and 36-43 were newly rejected under 35 USC 102 (b) as being anticipated by Kotton et al. Claims 37-43 were rejected under 35 USC 103 (a) as being unpatentable over Jackson et al. taken in view of Mather et al. The examiner indicated

that applicants' amendments necessitated the new ground(s) of rejection set forth in the Office action.

In response thereto, applicants filed a petition on June 23, 2010, requesting that the finality of the Office action of April 23, 2010 be withdrawn.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed by applicants on June 23, 2010, applicants request reconsideration of the final Office action mailed by the examiner on April 23, 2010. Specifically, applicants argue that "The critical issue in determining if a claim amendment "necessitates a new ground of rejection" is whether the rejection could have been made prior to that amendment being entered. Because the § 102(b) rejection set forth in the final action can be applied to claim 11 prior to the January 14, 2010 amendment, this amendment did not necessitate this new ground for rejection. Accordingly, it is improper to make this action final." More specifically, applicants argue "The § 102(b) rejection of claims 11-14 and 36 over Kotton in the final Office action relies on Kotton as teaching "Sca-1* CD45-Precam- [lung] cells" (final action, page 4). As explained above, claim 11, prior to the January 14, 2010 amendment, recited a Sca-1* cell from lung. Because Kotton teaches Sca-I* cells from lung, claim 11 could have been previously rejected over Kotton. Thus, the January 14, 2010 claim amendment did not necessitate this ground for rejection."

The following excerpt from the MPEP § 706.07 was also cited in support of applicants' assertions:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Applicants' arguments have been accorded careful consideration but they are not persuasive because claim 11 was amended to recite new limitations such as the cell being "Pecam negative" and "CD45 negative". The claims also require that the "cell is enriched by at least 30% as compared to lung tissue". These limitations were not previously set forth in the original claims and thus a new search was required to address these limitations. Accordingly, it is considered that applicants' claim amendments warranted a new ground of rejection with new prior art which the examiner properly made final. Consequently, the final Office action of April 23, 2010 is not considered improper and the finality of said Office action will not be withdrawn.

DECISION

The petition is **DENIED**.

Any new or renewed petition must be filed within TWO MONTHS of the mail date of this decision.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Jackie Stone

Director, Technology Center 1600



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED

MAR 07/2011

OFFICE OF PETITIONS

CLARK & ELBING LLP 101 FEDERAL STREET BOSTON MA 02110

In re Application of

Tyler Jacks et al.

Application No. 11/453,787

Filed: June 15, 2006

Attorney Docket No.: 01997/559002

ON PETITION

This is a decision on the Request for Reconsideration of Decision on Petition Under 37 CFR 1.181 to Withdraw Finality, filed October 25, 2010. This petition is being treated as a request under 37 CFR 1.181 that the Director exercise his supervisory authority and overturn the decision of the Director, Technology Center 1600 (Technology Center Director), dated August 23, 2010, which refused to withdraw the finality of the April 23, 2010 Office action.

The petition to overturn the decision of the Technology Center Director dated August 23, 2010, is **DENIED**.

. BACKGROUND

A non-final Office action was mailed July 14, 2009. This action included a rejection of claim 11 under 35 USC 102(b) as being anticipated by Hodson et al taken in light of Kim et al.

Petitioners filed an amendment on January 14, 2010 including an extensive amendment to claim 11.

In response to this amendment, a final Office action was mailed April 23, 2010. This action included inter alia a new rejection of claims 11-14 and 35 under 35 USC 102(b) as being anticipated by Kotton et al. This reference was newly cited by the examiner.

A petition to the Technology Center Director was filed June 23, 2010 requesting the finality of the April 23, 2010 Office action be withdrawn. This petition was denied in a decision mailed August 23, 2010 and the instant petition requesting reconsideration of that decision was filed October 25, 2010.

STATUTE, REGULATION, AND EXAMINING PROCEDURE

37 CFR 1.181(a) states in part:

- (a) Petition may be taken to the Director:
 - (1) From any action or requirement of any examiner in the ex parte prosecution of an application, or in ex parte or inter partes prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court;
 - (2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Director; and
 - (3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Board of Patent Appeals and Interferences, see § 41.3 of this title.

MPEP 706.07(a) states in part:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

OPINION

Petitioners argue in their petition to the Technology Center Director and in the instant petition that the Kotton reference, applied for the first time in the final Office action, was cited for teaching limitations of claim 11 that were present in claim 11 prior to the January 14, 2010 amendment. Petitioners further argue that the Kotton reference could have been applied to claim 11 prior to the January 14, 2010 amendment. From this, petitioners conclude that the amendment to the claim did not necessitate a new ground of rejection.

Petitioners' argument is not persuasive. Claim 11 was extensively amended in the January 14, 2010 amendment, introducing many additional limitations. The argument that a reference cited to meet an amended version of a claim could also meet the unamended version of the claim is not germane to whether the change in rejection was necessitated by the amendment. The issue is whether the amendment to the claim necessitated the new rejection. As noted in the Technology Center Director's decision, "These limitations were not previously set forth in the original claims and thus a new search was required to address these limitations." In other words, claim 11 was amended to the point that the Hodson reference could no longer meet claim 11. Petitioner's opinion that Kotton also met claim 11 before the amendment is not the issue. The salient point remains that claim 11 was amended to the point that a new rejection based on Kotton was required and thus the new ground of rejection was necessitated by applicant's amendment to the claim. Therefore, the finality of the Office action was in compliance with MPEP 706.07(a).

It follows that the Technology Center Director did not clearly err in upholding the finality of the Office action. Petitioners' contention that the finality was premature is without merit. The requirement in MPEP § 706.07 for making an Office action final is the development of a clear issue so that petitioner may ascertain the advisability of an appeal. As such, the new rejection of claim 11 based on Kotton was necessitated by petitioners' amendment to the claim and making that action final was appropriate.

DECISION

In regard to the premature finality of the April 23, 2010 Office action based on the new rejection under 35 USC 102, a review of the record indicates that the Technology Center Director did not abuse her discretion or act in an arbitrary and capricious manner in the petition decisions of August 23, 2010. The record establishes that the Technology Center Director had a reasonable basis to support her findings and conclusion.

The petition is granted to the extent that the decision of the Technology Center Director of April 23, 2010 has been reviewed, but is denied with respect to making any changes therein. The petition is denied.

This decision becomes a final agency action within the meaning of 5 U.S.C. § 704 for the purposes of obtaining judicial review upon entry of a final decision by the Board of Appeals and Interferences. See MPEP 1002.02.

Telephone inquires concerning this decision should be directed to Carl Friedman at (571) 272-

6842,

Robert W. Bahr

Acting Associate Commissioner for

Patent Examination Policy

ak/cf



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA VA 22314-1176

MAILED
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OFFICE OF PETITIONS

In re Patent No. 7,344,274

Issued: March 18, 2008

Application No. 11/453,813

Filed: June 16, 2006

Attorney Docket No: LINJ3072/EM

ON PETITION

This is a decision regarding your request under 37 CFR 1.28. for acceptance of a fee deficiency submission filed May 6, 2011.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.33d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission in the amount of \$1380, under 37 CFR 1.28, is hereby accepted and the petition is **GRANTED**.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (571) 272-3282.

Patricia Faison-Ball

Patricia Faison-Ball

Senior Petitions Attorney

Office of Petitions



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/04/2010

BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314-1176

Applicant : Stefan Simon Gustaaf Moriau : DECISION ON REQUEST FOR

Patent Number : 7650728 : RECALCULATION of PATENT Issue Date : 01/26/2010 : TERM ADJUSTMENT IN VIEW

Application No: 11/453,815 : OF WYETH AND NOTICE OF INTENT TO Filed : 06/16/2006 : ISSUE CERTIFICATE OF CORRECTION

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be $\mathbf{0}$ days. The USPTO will sua sponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

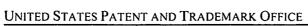
Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

DECISION ON PETITION





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria. VA 22313-1450

Millen, White, Zelano & Branigan, P.C. 2200 Clarendon Blvd. **Suite 1400** Arlington, VA 22201

In re Application of Richard Sigrist

Application No.: 11/454,112

Filed: June 16, 2006

Attorney Docket No.: GASPA-0005-P01

MACHINE FOR LOCALIZED

CLEANING WITH AN ELECTROLYTIC

CELL, FOR PICKLING AND/OR POLISHING METAL SURFACES

This is a decision on the "Petition To Accept Unintentionally Delayed Claim of Priority and Designation of a CIP" filed June 23, 2010. Since, the petition seeks acceptance of a claim under 35 U.S.C. § 120 for the benefit of the prior filed application set forth in the concurrently filed amendment the petition has been treated as a petition under 37 CFR 1.78(a)(3).

The petition is **GRANTED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the

Application No. 11/454,112

claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed international application has been included in an amendment filed with present petition, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) applicant's statement that "the entire delay between presentation of the present Claim for Priority, and the time the claim was due under 37 CFR 1.55(a)(1) was unintentional" is construed as meaning that "the entire delay between the date the claim was due under 37 CFR 1.78(a)(3) and the date the claim was filed was unintentional." If this is incorrect, petitioner must immediately notify the Office of PCT Legal Administration. As construed, petitioner's statement satisfied item (3) above.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional applications, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Anthony Smith, Attorney Advisor, at (571) 272-3298. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 1711 for appropriate action on the amendment filed June 23, 2010, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 and 365(c) to the prior filed application.

Boris Milef

Legal Examiner

Office of Petitions and PCT Legal Administration

ATTACHMENT: Corrected Filing Receipt



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

DRINKER BIDDLE & REATH (DC) 1500 K STREET, N.W. SUITE 1100 WASHINGTON DC 20005-1209

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OFFICE OF PETITIONS

In re Application of

Peter Littecke, et al.

Application No. 11/454,127 : DECISION GRANTING PETITION

Filed: June 16, 2006 : UNDER 37 CFR 1.313(c)(2)

Attorney Docket No. 47113-5078-00-US

(225691)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed September 8, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on August 22, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.¹

Telephone inquiries regarding this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1784 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/AMW/ April M. Wise Petitions Examiner Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B - Fee(s) Transmittal Form (along with any balance due at the time of submission). <u>Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.</u>





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OFFICE OF PETITIONS

In re Patent of Chang et al.

Patent No. 7,723,110

Issue Date: May 25, 2010 Application No. 11/454,157 Filed: June 16, 2006

Docket No. 044463-0530

DECISION ON REQUEST

FOR RECONSIDERATION OF

PATENT TERM ADJUSTMENT

This is a decision on the petition filed on July 26, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two hundred eight-six (286) days.

:

The petition under 37 CFR 1.705(d) is dismissed.

The sole issue pertains to the three years to issue guarantee of 35 U.S.C. $154\,(b)\,(1)\,(B)$ and 37 CFR $1.702\,(b)$ (hereinafter, "B delay").

The Office does not concur with patentees' assertion the period of B delay is 141 days. The period of B delay in this case is 41 days. Unless a Request for Continued Examination ("RCE") is filed, the period of B Delay ends of the date the patent issues. In this case, a RCE was filed November 5, 2009. Per 35 U.S.C. § 154(b)(1)(B)(i), B Delay does not include "any time consumed by continued examination of the application requested by the applicant under section 132(b)." The maximum period of B Delay in this case is 141 days, which is the number of days beginning on June 17, 2009, the day after the date three years after the application's filing date, and ending on November 4, 2009, the day before the date the RCE was filed.

As stated in 35 U.S.C. 154(b)(1)(B)(ii), B delay does not include "any time consumed by appellate review by the Board of Patent Appeals and Interferences." A Notice of Appeal was filed

on July 28, 2009 and applicants withdrew the appeal by filing an RCE on November 5, 2009. Excluding the 100 days consumed by appellate review (beginning July 28, 2009, the date the Notice of Appeal was filed, and ending November 4, 2009, the day before the RCE was filed) results in a period of B delay of 41 days (141 - 100).

In light of the above, the patent term adjustment remains 186 days, which is the sum of 238 days of A delay and 41 days of B delay, reduced by 93 days of applicant delay.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). This fee is required for consideration of a petition under 37 CFR 1.705(d) and will not be refunded.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

Shure Welly Brankly Shirene Willis Brantley

Senior Petitions Attorney

Office of Petitions

DATE :	1/4/2011	OR CERTIFICATE OF CORRECTION Paper No.:
	ART UNIT 2465	
	Request for Certificate of Correct	ction for Appl. No.: <u>11/45/4260</u> Patent No.: <u>7830896</u> 2
SUBJECT :	Request for Certificate of Correc	12/2/10
		CofC mailroom date: 1047/10
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		Virginia Tolbert Certificates of Correction Branch
		571-272-0460
Thank You Fo	r Your Assistance	
The request for Note your decision on		entified correction(s) is hereby:
d A	pproved D4	All changes apply.
□ A	pproved in Part	Specify below which changes do not apply.
□ D	enied	State the reasons for denial below.
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PTO/98/44 (04-05)

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UNITED STATES PATENT AND TRADEMARK OFFICE CERTIFICATE OF CORRECTION

Page 1 of 2

PATENT NO.

: 7,830,896

APPLICATION NO.

11/454,260

ISSUE DATE

 $\pm 11/9/2010$

INVENTORIS)

Sunii K. Srivastava

it is certified that an error appears or errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below.

Colum 32, Claim 13, Line 9, remove "to" between "packet" and "to"

Colum 33, Claim 29, Line 46, replace "A computer readable votable or non-votable storage medium" with -- A non-transitory computer-readable volatile or non-volatile storage medium-

Colum.33, Claim 30, Line 64, reptace "A computer readable medium" with "The non-transitory computer readable votable or a non-voiatile storage medium-

Colum 34, Claim 31, Lice 5, replace "A compuler-readable reedium" with -- The non-transitory computer-readable volatile or nonvolatile storage medium--

Colum 35, Claim 32, Line 13, replace "A computer-readable readium" with -- The non-transitory computer-readable volatile or non-volatile storage medium-

Colum 34, Claim 33, Line 22, replace "A computer-resolable medium" with -- The non-transitory computer-readable solatile or non-volatile storage medium--

Colum 34, Claim 34, Line 33, replace "A compulse-readable medium" with -- The non-transitory computer-readable volatile or con-volable storage medium-

Colum 34, Claim 35, Line 39, replace "A computer-readable medium" with --The non-transitory computer-readable volaille or nch volaille storage medium-

Colum 34, Claim 36, Line 46, replace "A computer-readable medium" with --The non-transitory computer-readable volatile or non-volatile slorage mediam-

MAILING ADDRESS OF SENDER (Please do not use customer number below): Hickman Palermo Truong & Becker LLP 2055 Gateway Place, Suite 550

San Jose, CA 96110-1089

The obligation of information is required by 0.7 CFR 1,322, 1,323, and 1,323. The information is required to better a benefit by the static which is fell fend by the UEPTO to process) an application. Confinensity is governed by 35 U.B.C. 122 and 0.7 CFR 1,32. This collection is estimated to take 1.6 hour to complete services, services, services perfectly open the individual case. Any comment of the velt require to complete material suggestions for the transfer of the annual to the control to the control of the velt require to complete material suggestions for the transfer of the annual to the control of the velt require to complete materials suggestions for the transfer of the annual transfer of the control of the co FORMS TO THIS ADDRESS, SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1460.



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UNITED STATES PATENT AND TRADEMARK OFFICE CERTIFICATE OF CORRECTION

Page 2 of 2

PATENT NO

: 7.830,896

APPLICATION NO.

: 11/454.260

ISSUE DATE

±11/9/2010

ENVENTOR(S)

Sunil K. Srivastava

It is certified that an error appears or errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Colum 34, Claim 37, Line 53, replace "A computer-readable medium" with "The non-transitory computer-readable volatile or non-volatile storage medium".

Colum 34, Claim 38, Une 62, replace "A computer-readable medion" with ...The non-transfory computer-readable volable or non-volable storage medium-

Colum 35, Claim 39, Line 8, replace "A computer-readable medium" with "The non-transitory computer-readable volatile or non-volatile storage medium"

Colum 36, Claim 40, Line 16, replace "A computer readable medium" with "The non-transitory computer-readable volatile or non-volatile storage medium".

Colum 35. Claim 41, Line 21, replace "A computer-readable medium" with —The non-transitory computer-readable volatile or non-volatile storage medium—

Colum 35, Claim 42, Line 29, reptace "A computer-readable medium" with —The non-transitory computer-readable volatile or non-volatile storage medium—

MAILING ADDRESS OF SENDER (Please do not use customer number below): Hickman Palermo Truong & Becker LLP 2055 Gateway Place, Suite 550 San Jose, CA 95110-1089

This collection of information is required by 37 CFN 1.322, 1.323, and 1.324. The information is required to obtain or return a benefit by the profit is to his faint by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 nour to complete, including gathering, preparing, and submitting the completed association form to the USPTO. There will vary dispersing upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burson, should be sent to the Chief information Officer, U.S. Patent sug Trademark Office, U.S. Department of Commerce, P.C. Box 1480. Associate, VA 22313-1450. DO NOT EEND FEES CIR COMPLETED.

VA 22313-1450. SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1480. Alexanstria, VA 22313-1450.



US007830896B2

(12) United States Patent

Srivastava

(10) Patent No.:

US 7,830,896 B2

(45) Date of Patent:

*Nov. 9, 2010

(54) SERVER LOAD BALANCING USING IP OPTION FIELD APPROACH TO IDENTIFY ROUTE TO SELECTED SERVER

(75) Inventor: Sunil K. Srivastava, Fremont, CA (US)

(73) Assignee: Cisco Technology, Inc., San Jose, CA
(US)

(*) Notice:

Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1105 days.

This patent is subject to a terminal disclaimer.

(21) Appl. No.: 11/454,260

(22) Filed: Jun. 16, 2006

(65) Prior Publication Data

US 2006/0233155 A1 Oct. 19, 2006

Related U.S. Application Data

- (63) Continuation of application No. 10/101,665, filed on Mar. 19, 2002, now Pat. No. 7,088,718.
- (51) Int. Cl. II04L 12/28 (2006.01)
- (52) U.S. Cl. 370/401; 370/392; 709/238

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(Continued)

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Lee et al., "A Study of Flow-based Traffic Admission Control Algorithm in the ATM-based MPLS Network", IEEE, Information Networking. Proceedings. 15th International Conference on Jan. 31-Feb. 2, 2001, pp. 213-218.

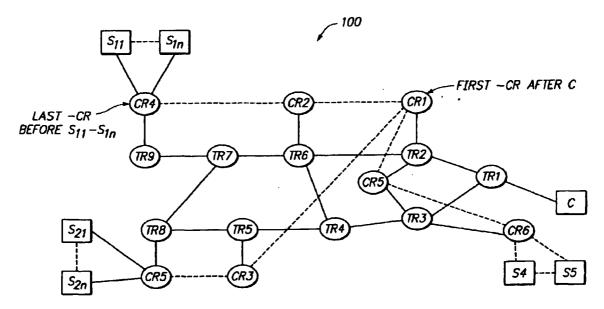
(Continued)

Primary Examiner—Duc C Ho (74) Attorney, Agent, or Firm—Hickman Palermo Truong & Becker LLP

(57) ABSTRACT

A router for routing data from a client through load-balancing nodes to a selected load-balanced server among a plurality of servers in a network involves: receiving, at a last load balancing node associated with a selected server among the plurality of servers, a first packet of a server reply to a request from the client; storing identifiers of ingress interfaces on which the packet arrives, in a send path list for server load balancing, as the first packet of the server reply is routed from the last load balancing node to the client using hop-by-hop decisions; receiving subsequent packets of the client request; and forwarding the subsequent packets to the selected server only on a route that is defined by the send path list and without hop-by-hop routing decisions. Packet flows are routed from the same client to the same server without hop-by-hop routing decisions or repeated load-balancing decisions.

56 Claims, 19 Drawing Sheets



also take the form of acoustic or light waves, such as those generated during radio wave and infrared data communications.

Common forms of computer-readable media include, for example, a floppy disk, a flexible disk, hard disk, magnetic tape, or any other magnetic medium, a CD-ROM, any other optical medium, punchcards, papertape, any other physical medium with patterns of holes, a RAM, a PROM, and EPROM, a FLASH-EPROM, any other memory chip or cartridge, a carrier wave as described hereinafter, or any other 10 balancing devices. medium from which a computer can read.

Various forms of computer readable media may be involved in carrying one or more sequences of one or more instructions to processor 704 for execution. For example, the remote computer. The remote computer can load the instructions into its dynamic memory and send the instructions over a telephone line using a modem. A modem local to computer system 700 can receive the data on the telephone line and use an infrared transmitter to convert the data to an infrared sig- 20 nal. An infrared detector can receive the data carried in the infrared signal and appropriate circuitry can place the data on bus 702. Bus 702 carries the data to main memory 706, from which processor 704 retrieves and executes the instructions. The instructions received by main memory 706 may option- 25 ally be stored on storage device 710 either before or after execution by processor 704.

Computer system 700 also includes a communication interface 718 coupled to bus 702. Communication interface 718 provides a two-way data communication coupling to a 30 network link 720 that is connected to a local network 722. For example, communication interface 718 may be an integrated services digital network ("ISDN") card or a modem to provide a data communication connection to a corresponding type of telephone line. As another example, communication 35 interface 718 may be a local area network ("LAN") card to provide a data communication connection to a compatible LAN. Wireless links may also be implemented. In any such implementation, communication interface 718 sends and receives electrical, electromagnetic or optical signals that 40 carry digital data streams representing various types of infor-

Network link 720 typically provides data communication through one or more networks to other data devices. For example, network link 720 may provide a connection through 45 local network 722 to a host computer 724 or to data equipment operated by an Internet Service Provider ("ISP") 726. ISP 726 in turn provides data communication services through the worldwide packet data communication network now commonly referred to as the "Internet" 728. Local net- 50 work 722 and Internet 728 both use electrical, electromagnetic or optical signals that carry digital data streams. The signals through the various networks and the signals on network link 720 and through communication interface 718, which carry the digital data to and from computer system 700, 55 cessor, cause the processor to perform: are exemplary forms of carrier waves transporting the information.

Computer system 700 can send messages and receive data, including program code, through the network(s), network link 720 and communication interface 718. In the Internet 60 example, a server 730 might transmit a requested code for an application program through Internet 728, ISP 726, local network 722 and communication interface 718. In accordance with the invention, one such downloaded application provides for routing data to a load-balanced server and server 65 load balancing using an IP option field approach to identify a route to a selected server as described herein.

The received code may be executed by processor 704 as it is received, and/or stored in storage device 710, or other non-volatile storage for later execution. In this manner, computer system 700 may obtain application code in the form of a carrier wave.

Embodiments may be implemented using a Cisco server load-balancing product with modified software as the First CR in the network of FIG. 1 A. Further, the approaches herein may be used to improve scalability of existing server load

6.0 Extensions and Alternatives

In the foregoing specification, the invention has been instructions may initially be carried on a magnetic disk of a 15 described with reference to specific embodiments thereof. Advantages accrue from certain embodiments in that the disclosed approaches do not use tag or label distribution protocol when using dynamic MPLS Paths per TCP/UDP connection. Further, network nodes do not need to track flows by keeping flow to tag label mappings for either their ingress or egress interfaces; instead, packets carry path labels that intrinsically indicate where the packet is routed next. Also, the disclosed approaches avoid the need for lookups from ingress tag to flow 5-tuples and from flow 5-tuples to egress tag. It will be evident that various modifications and changes may be made to embodiments herein without departing from the broader spirit and scope of the invention. The specification and drawings are, accordingly, to be regarded in an illustrative rather than a restrictive sense.

What is claimed is:

- 1. A router, comprising:
- a network interface that is coupled to a data network for receiving one or more packet flows therefrom;
- a processor;
- one or more stored sequences of instructions which, when executed by the processor, cause the processor to perform:
 - receiving, at a last node associated with a selected server among a plurality of servers, a first packet of a server reply to a client request from a client;
 - storing one or more identifiers of ingress interfaces on which the first packet arrives, in a send path list in a header of the first packet of the server reply, as the first packet of the server reply is routed from the selected server to the client using hop-by-hop decisions;
 - wherein the send path list comprises an ordered list of all ingress interfaces on which the first packet arrived;
 - receiving one or more subsequent packets of the client
 - forwarding the one or more subsequent packets to the selected server on a route that is defined by the send path list and without hop-by-hop routing decisions.
- 2. A router as recited in claim 1, further comprising sequences of instructions which, when executed by the pro
 - setting a first flag value in the first packet of the server reply; and
 - wherein the first flag value signals that the first packet contains the send path list.
- 3. A router as recited in claim 1, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform:
 - setting a second flag value in each of the one or more subsequent packets; and
 - wherein the second flag value instructs nodes to use the send path list for routing the one or more subsequent packets for server load balancing.

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- 4. A router as recited in claim 1, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform:
 - setting a first flag value in the first packet of the server reply; and
 - wherein the first flag value signals that the first packet contains the send path list and comprises an IP-RECORD-ROUTE-OPTION-FOR-SLB flag value in a header of the first packet.
- sequences of instructions which, when executed by the processor, cause the processor to perform:
 - setting a second flag value in each of the one or more subsequent packets; and
 - wherein the second flag value instructs nodes to use the 15 send path list for routing the one or more subsequent packets and comprises an IP-STRICT-ROUTE-OP-TION-FOR-SLB flag value in a header of the subsequent packets.
- 6. A router as recited in claim 1, further comprising 20 sequences of instructions which, when executed by the processor, cause the processor to perform selecting one of the plurality of servers to respond to the client request in response to receiving a first packet of the client request at a first node in a network associated with the client.
- 7. A router as recited in claim 1, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform storing the send path list in a mapping at the last node when the first packet reaches the last node, wherein the mapping comprises an association 30 of send path lists and client identifying information.
- 8. A router as recited in claim 1, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform storing the send path list in a mapping at the last node when the first packet reaches 35 the last node, wherein the mapping comprises an association of send path lists and packet flow identifying information.
- 9. A router as recited in claim 1, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform storing one or more 40 identifiers of ingress interfaces on which the first packet of the client request arrives, in a return path list, as the first packet of the client request is routed from a first node to the last node using hop-by-hop decisions, based on setting an IP-RECORD-ROUTE-OPTION-FOR-SLB flag value in the 45 first packet of the client request.
- 10. A router as recited in claim 9, wherein the router is a first router, and the router further comprises sequences of instructions which, when executed by the processor, cause the processor to perform:
 - receiving one or more subsequent packets of the server
 - setting an IP-STRICT-ROUTE-OPTION-FOR-SLB flag value in each of the one or more subsequent packets of the server reply; and
 - forwarding the one or more subsequent packets of the server reply to the client on a second route that is defined only by the return path list and without hop-by-hop routing decisions.
- 11. A router as recited in claim 9, further comprising 60 sequences of instructions which, when executed by the processor, cause the processor to perform storing the return path list in a mapping at the first node when the first packet reaches the first node, wherein the mapping comprises an association of return path lists and server identifiers.
- 12. A router as recited in claim 11, further comprising sequences of instructions which, when executed by the pro-

- cessor, cause the processor to perform popping a server identifier from the send path list and forwarding the first packet to a server on an IP address contained in the server identifier.
- 13. A router as recited in claim 11, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform popping a server identifier from the send path list, performing network address translation on the server identifier to determine where to forward the first packet, and forwarding the first packet to 5. A router as recited in claim 1, further comprising 10 a server on an IP address determined by the network address translation.
 - 14. A router as recited in claim 11, wherein:
 - the first node and last node are load-balancing routers that participate as multicast nodes; and
 - the selected server is a load-balanced server.
 - 15. An apparatus, comprising:

one or more processors;

- means for receiving, at a last node associated with a selected server among a plurality of servers, a first packet of a server reply to a client request from a client;
- means for storing one or more identifiers of ingress interfaces on which the first packet arrives, in a send path list in a header of the first packet of the server reply, as the first packet of the server reply is routed from the selected server to the client using hop-by-hop decisions;
- wherein the send path list comprises an ordered list of all ingress interfaces on which the first packet arrived;
- means for receiving one or more subsequent packets of the client request:
- means for forwarding the one or more subsequent packets to the selected server on a route that is defined by the send path list and without hop-by-hop routing decisions.
- 16. An apparatus as recited in claim 15, further comprising: means for setting a first flag value in the first packet of the server reply; and
- wherein the first flag value signals that the first packet contains the send path list.
- 17. An apparatus as recited in claim 15, further comprising: means for setting a second flag value in each of the one or more subsequent packets; and
- wherein the second flag value instructs nodes to use the send path list for routing the one or more subsequent packets for server load balancing.
- 18. An apparatus as recited in claim 15, further comprising: means for setting a first flag value in the first packet of the server reply; and
- wherein the first flag value signals that the first packet contains the send path list and comprises an. IP-RECORD-ROUTE-OPTION-FOR-SLB flag value in a header of the first packet.
- 19. An apparatus as recited in claim 15, further comprising: means for setting a second flag value in each of the one or more subsequent packets; and
- wherein the second flag value instructs nodes to use the send path list for routing the one or more subsequent packets and comprises an IP-STRICT-ROUTE-OP-TION-FOR-SLB flag value in a header of the subsequent packets.
- 20. An apparatus as recited in claim 15, further comprising means for selecting one of the plurality of servers to respond to the client request in response to receiving a first packet of the client request at a first node in a network associated with 65 the client.
 - 21. An apparatus as recited in claim 15, further comprising means for storing the send path list in a mapping at the last

node when the first packet reaches the last node, wherein the mapping comprises an association of send path lists and client identifying information.

- 22. An apparatus as recited in claim 15, further comprising means for storing the send path list in a mapping at the last 5 node when the first packet reaches the last node, wherein the mapping comprises an association of send path lists and packet flow identifying information.
- 23. An apparatus as recited in claim 15, further comprising means for storing one or more identifiers of ingress interfaces on which the first packet of the client request arrives, in a return path list, as the first packet of the client request is routed from a first node to the last node using hop-by-hop decisions, based on setting an IP-RECORD-ROUTE-OPTION-FOR-SLB flag value in the first packet of the client request.
 - 24. An apparatus as recited in claim 23, further comprising: means for receiving one or more subsequent packets of the server reply:
 - means for setting an IP-STRICT-ROUTE-OPTION-FOR-SLB flag value in each of the one or more subsequent ²⁰ packets of the server reply; and
 - means for forwarding the one or more subsequent packets of the server reply to the client on a second route that is defined only by the return path list and without hop-by-hop routing decisions.
- 25. An apparatus as recited in claim 23, further comprising means for storing the return path list in a mapping at the first node when the first packet reaches the first node, wherein the mapping comprises an association of return path lists and server identifiers.
- 26. An apparatus as recited in claim 25, further comprising means for popping a server identifier from the send path list and forwarding the first packet to a server on an IP address contained in the server identifier.
- 27. An apparatus as recited in claim 25, further comprising means for popping a server identifier from the send path list, performing network address translation on the server identifier to determine where to forward the first packet, and forwarding the first packet to a server on an IP address determined by the network address translation.
 - 28. An apparatus as recited in claim 25, wherein:

the first node and last node are load-balancing routers that participate as multicast nodes; and

the selected server is a load-balanced server.

- 29...A computer-readable-volatile or non-volatile storage medium storing one or more sequences of instructions which, when executed by a processor, cause the processor to perform:
 - receiving, at a last node associated with a selected server among a plurality of servers, a first packet of a server reply to a client request from a client;
 - storing one or more identifiers of ingress interfaces on which the first packet arrives, in a send path list in a header of the first packet of the server reply, as the first packet of the server reply is routed from the selected server to the client using hop-by-hop decisions;
 - wherein the send path list comprises an ordered list of all ingress interfaces on which the first packet arrived;
 - receiving one or more subsequent packets of the client 60 request;
 - forwarding the one or more subsequent packets to the selected server on a route that is defined by the send path list and without hop-by-hop routing decisions.
- 30. A computer readable medium as recited in claim 29, 65 further comprising sequences of instructions which, when executed by the processor, cause the processor to perform:

setting a first flag value in the first packet of the server reply; and

wherein the first flag value signals that the first packet contains the send path list.

- 31. A computer-readable medium as recited in claim 29, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform:
 - setting a second flag value in each of the one or more subsequent packets; and
 - wherein the second flag value instructs nodes to use the send path list for routing the one or more subsequent packets for server load balancing.
- 32. Accomputer-readable medium as recited in claim 29, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform:
 - setting a first flag value in the first packet of the server reply; and
 - wherein the first flag value signals that the first packet contains the send path list and comprises an IP-RECORD-ROUTE-OPTION-FOR-SLB flag value in a header of the first packet.
- 33. A computer readable medium as recited in claim 29, further comprising sequences sequences of instructions which, when executed by the processor, cause the processor to perform:

setting a second flag value in each of the one or more subsequent packets; and

- wherein the second flag value instructs nodes to use the send path list for routing the one or more subsequent packets and comprises an IP-STRICT-ROUTE-OP-TION-FOR-SLB flag value in a header of the subsequent packets.
- 34. A computer-readable medium as recited in claim 29, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform selecting one of the plurality of servers to respond to the client request in response to receiving a first packet of the client request at a first node in a network associated with the client.
- 35. A computer-readable medium as recited in claim 29, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform storing the send path list in a mapping at the last node when the first packet reaches the last node, wherein the mapping comprises an association of send path lists and client identifying information.
- 36-A-computer-readable medium as recited in claim 29, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform storing the send path list in a mapping at the last node when the first packet reaches the last node, wherein the mapping comprises an association of send path lists and packet flow identifying information.
- 37...A computer readable medium as recited in claim 29, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform storing one or more identifiers of ingress interfaces on which the first packet of the client request arrives, in a return path list, as the first packet of the client request is routed from a first node to the last node using hop-by-hop decisions, based on setting an IP-RECORD-ROUTE-OPTION-FOR-SLB flag value in the first packet of the client request.
- 38. A computer-readable medium as recited in claim 37, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform:

receiving one or more subsequent packets of the server reply;

- setting an IP-STRICT-ROUTE-OPTION-FOR-SLB flag value in each of the one or more subsequent packets of the server reply; and
- forwarding the one or more subsequent packets of the server reply to the client on a second route that is defined 5 only by the return path list and without hop-by-hop routing decisions.
- 39. A computer-readable medium as recited in claim 37, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform 10 storing the return path list in a mapping at the first node when the first packet reaches the first node, wherein the mapping comprises an association of return path lists and server identifiers.
- 40. A computer-readable medium as recited in claim 39, 15 further comprising sequences of instructions which, when executed by the processor, cause the processor to perform popping a server identifier from the send path list and forwarding the first packet to a server on an IP address contained in the server identifier.
- 41. A computer-readable medium as recited in claim 39, further comprising sequences of instructions which, when executed by the processor, cause the processor to perform popping a server identifier from the send path list, performing network address translation on the server identifier to determine where to forward the first packet, and forwarding the first packet to a server on an IP address determined by the network address translation.
- 42. A computer-readable medium as recited in claim 39, wherein:
 - the first node and last node are load-balancing routers that participate as multicast nodes; and
 - the selected server is a load-balanced server.
 - 43. A method, comprising:
 - receiving, at a last node associated with a selected server 35 among a plurality of servers, a first packet of a server reply to a client request from a client;
 - storing one or more identifiers of ingress interfaces on which the first packet arrives, in a send path list in a header of the first packet of the server reply, as the first packet of the server reply is routed from the selected server to the client using hop-by-hop decisions;
 - wherein the send path list comprises an ordered list of all ingress interfaces on which the first packet arrived;
 - receiving one or more subsequent packets of the client 45 request;
 - forwarding the one or more subsequent packets to the selected server on a route that is defined by the send path list and without hop-by-hop routing decisions;
 - wherein the method is performed by one or more proces-
 - 44. A method as recited in claim 43, further comprising: setting a first flag value in the first packet of the server reply; and
 - wherein the first flag value signals that the first packet 55 contains the send path list.
 - 45. A method as recited in claim 43, further comprising: setting a second flag value in each of the one or more subsequent packets; and
 - wherein the second flag value instructs nodes to use the send path list for routing the one or more subsequent packets for server load balancing.
 - 46. A method as recited in claim 43, further comprising: setting a first flag value in the first packet of the server reply; and

- wherein the first flag value signals that the first packet contains the send path list and comprises an IP-RECORD-ROUTE-OPTION-FOR-SLB flag value in a header of the first packet.
- 47. A method as recited in claim 43, further comprising: setting a second flag value in each of the one or more subsequent packets; and
- wherein the second flag value instructs nodes to use the send path list for routing the one or more subsequent packets and comprises an IP-STRICT-ROUTE-OP-TION-FOR-SLB flag value in a header of the subsequent packets.
- 48. A method as recited in claim 43, further comprising: selecting one of the plurality of servers to respond to the client request in response to receiving a first packet of the client request at a first node in a network associated with the client.
- 49. A method as recited in claim 43, further comprising: storing the send path list in a mapping at the last node when the first packet reaches the last node, wherein the mapping comprises an association of send path lists and client identifying information.
- 50. A method as recited in claim 43, further comprising: storing the send path list in a mapping at the last node when the first packet reaches the last node, wherein the mapping comprises an association of send path lists and packet flow identifying information.
- 51. A method as recited in claim 43, further comprising: storing one or more identifiers of ingress interfaces on which the first packet of the client request arrives, in a return path list, as the first packet of the client request is routed from a first node to the last node using hop-by-hop decisions, based on setting an IP-RECORD-ROUTE-OPTION-FOR-SLB flag value in the first packet of the client request.
- 52. A method as recited in claim 51, further comprising: receiving one or more subsequent packets of the server reply:
- setting an IP-STRICT-ROUTE-OPTION-FOR-SLB flag value in each of the one or more subsequent packets of the server reply; and
- forwarding the one or more subsequent packets of the server reply to the client on a second route that is defined only by the return path list and without hop-by-hop routing decisions.
- 53. A method as recited in claim 51, further comprising: storing the return path list in a mapping at the first node when the first packet reaches the first node, wherein the mapping comprises an association of return path lists and server identifiers.
- 54. A method as recited in claim 53, further comprising: popping a server identifier from the send path list and forwarding the first packet to a server on an IP address contained in the server identifier.
- 55. A method as recited in claim 53, further comprising: popping a server identifier from the send path list, performing network address translation on the server identifier to determine where to forward the first packet, and forwarding the first packet to a server on an IP address determined by the network address translation.
- 56. A method as recited in claim 53, wherein:
- the first node and last node are load-balancing routers that participate as multicast nodes; and
- the selected server is a load-balanced server.

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VOLPE AND KOENIG, P.C. UNITED PLAZA 30 SOUTH 17TH STREET PHILADELPHIA PA 19103

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MAY 1 0 2011

OFFICE OF PETITIONS

In re Application of Mark Fowler et al.

Application No. 11/454,267

Filed: June 16, 2006

Attorney Docket No. ATEC.P014

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 25, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed April 29, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 30, 2010. A Notice of Abandonment was mailed on December 2, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$1,620 and (3) a proper statement of unintentional delay. Accordingly, the amendment is accepted as being unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 2628 for appropriate action by the Examiner in the normal course of business on the reply received March 25, 2011.

/Kimberly Inabinet/

Kimberly Inabinet Petitions Examiner Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE



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LEE & HAYES, PLLC **601 W RIVERSIDE SUITE 1400 SPOKANE WA 99201**

MAILED

MAR 14 2011 OFFICE OF PETITIONS

In re Application of

Jung et al.

Application No. 11/454,343

Filed: June 16, 2006

Attorney Docket No. SE1-0137-US

DECISION ON PETITION

TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed January 26, 2011, which is being treated as a request to withdraw from employment in a proceeding before the Office under 37 C.F.R. § 10.40.

The request is **DISMISSED**.

A review of the file record indicates that Lewis C. Lee does not have power of attorney in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

The request to change the correspondence address of record is not accepted in view of Lewis C. Lee not having power of attorney. See MPEP §§ 601.03 and 405.

All future communications from the Office will continue to be directed to the belowlisted address until otherwise notified by applicant.

Currently, an Appeal Brief was filed on December 20, 2010 in the above-identified application.

Telephone inquires concerning this decision should be directed to the undersigned at

(571) 272-7751.

Joan Olszewski **Petitions Examiner** Office of Petitions

cc:

Constellation Law Group, PLLC

P.O. Box 220 Tracyton WA 98393

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

CHRISTIE, PARKER & HALE, LLP PO BOX 29001 GLENDALE CA 91209-9001

MAILED

JAN 13 2012

OFFICE OF PETITIONS

In re Application of John A. Kapeles

Application No. 11/454,347

Filed: June 16, 2006

Attorney Docket No.: 57214/D588

ON PETITION

This is a decision on the petition filed December 16, 2011 under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the non-Final Office Action mailed August 6, 2009. A shortened statutory period of three months was set for replying to the non-Final Office Action. No extensions of time having been requested prior to the abandonment of the application, this application became abandoned November 9, 2009. Accordingly, the Notice of Abandonment was mailed March 10, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a divisional application under 37 CFR 1.53(b); (2) a two month extension of time; (3) the petition fee of \$1860; and (4) an adequate statement of unintentional delay.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) <u>must</u> be accompanied by:

⁽¹⁾ the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

⁽²⁾ the petition fee as set forth in 37 CFR 1.17(m);

⁽³⁾ a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

⁽⁴⁾ any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Since this application is being revived for purposes of continuity only and since continuity has been established by this decision reviving the application, the application is again abandoned in favor of divisional application no.12/632,582 filed December 7, 2009, pursuant to the provisions of 37 CFR 1.53(b).

Additionally, however, there is no indication that petitioner herein was ever empowered to prosecute the instant application. If petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision is being mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

The petition fee and the extension of time fee have been charged to the credit card provided.

This matter is being referred to Technology Center 1742 for processing of the divisional application filed December 7, 2009.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball Senior Petitions Attorney Office of Petitions

CC:

SZABO,PAUL, KANE KESSLER P.C. 1350 AVENUE OF THE AMERICAS NEW YORK, NY 10019



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
11/454,475	06/15/2006	Yen-Chi Lec	051126B1	8000	
23696 OHALCOMM	7590 02/16/2012 INCORPORATED	EXAMINER			
QUALCOMM INCORPORATED 5775 MOREHOUSE DR.			MURPHY, RHONDA L		
SAN DIEGO,	CA 92121		ART UNIT	PAPER NUMBER	
			2462		
		,			
			NOTIFICATION DATE	DELIVERY MODE	
			02/16/2012	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

us-docketing@qualcomm.com



UNITED STATES PATENT AND TRADEMARK OFFICE

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February 14, 2012

QUALCOMM INCORPORATED 5775 MOREHOUSE DR. SAN DIEGO CA 92121

In re Application of LEE, YEN-CHI., Et Al.

Application No: 11/454475

Filed: 06/15/2006

Attorney Docket No: 051126B1

: DECISION ON PETITION

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) June 15, 2006.

The petition is **DISMISSED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

- 1. The fee set forth under 37 C.F.R. 1.17(h),
- 2. Three (3) sets of the color drawings in question, (One (1) set for EFW filings, and
- 3. The specification containing the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings

"The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee."

The petition did not meet the following requirement(s).	1 🗆	2 🗌 3 🗹
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A renewed petition filed under 37 C.F.R. 1.84 (a) (2) must be filed within TWO (2) MONTHS of this decision. If a renewed petition is not filed within the TWO (2) Months of this decision the drawings will be printed in black and white.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571- 576-1565.

/Bernadette Queen/ Quality Control Specialist Office of Data Management Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Law Office of Michael D. Eisenberg Intellectual Property Law 3258 Caminito Eastbluff Suite 89 San Diego CA 92037

MAILED MAR 0 1 2011

OFFICE OF PETITIONS

In re Application of

Johnson

Application No. 11/454,495

ON PETITION

Filed: June 16, 2006

Attorney Docket No. JOHNSON-P001

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 4, 2010, to revive the above-identified application.

The petition is GRANTED.

The application became abandoned October 24, 2008 for failure to timely submit a proper reply to the final Office action mailed July 23, 2008. The final Office action set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed January 30, 2009.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), including fee and submission required by 37 CFR 1.114; (2) the required petition fee; and (3) a proper statement of unintentional delay.

This application is being referred to Technology Center AU 3764 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Application No. 11/454,495

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

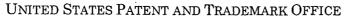
/ALESIA M. BROWN/

Alesia M. Brown Attorney Advisor Office of Petitions 4)4, 1 8

0475	0107144	Paper No.:		
DATE	2/27/11			
TO SPE OF	: ART UNIT			
SUBJECT	: Request for Certificate of Correc	tion for Appl. No.: <u>11454622</u> Patent No.: <u>780</u>		
	······································	CofC mailroom date:		
		2/14/11		
Please resp	oond to this request for a cer	tificate of correction within 7 days.		
FOR IFW F	ILES:	•		
the IFW ap		orrections as shown in the COCIN document(s) in tter should be introduced, nor should the scope or		
	nplete the response (see beliment code COCX.	ow) and forward the completed response to scannin		
FOR PAPE	R FILES:			
		orrections as shown in the attached certificate of see below) and forward it with the file to:		
Rand Palm	ificates of Correction Bran dolph Square – 9D10-A n Location 7580 Mthe Directors/SP∃respo			
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Camor Thank You The reques Note your decision	I For Your Assistance st for issuing the above-ide on on the appropriate box.	Certificates of Correction Branch Certificates of Correction Branch 571-272-3421 entified correction(s) is hereby:		
Camor Thank You The reques Note your decision	For Your Assistance st for issuing the above-ide on on the appropriate box. Approved	Certificates of Correction Branch Certificates of Correction Branch 571-272-3421 entified correction(s) is hereby: All changes apply.		
Camor Thank You The reques Note your decision	For Your Assistance st for issuing the above-ide on on the appropriate box. Approved Approved in Part Denied	Certificates of Correction Branch Certificates of Correction Branch 571-272-3421 entified correction(s) is hereby: All changes apply. Specify below which changes do not apply.		
Camor Thank You The reques Note your decision	For Your Assistance st for issuing the above-ide on on the appropriate box. Approved Approved in Part Denied	Certificates of Correction Branch Certificates of Correction Branch 571-272-3421 entified correction(s) is hereby: All changes apply. Specify below which changes do not apply.		

SUPERVISORY PATENT EXAMINER TECHNOLOGY CENTER 3600

AU 3625





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

WOLF GREENFIELD & SACKS, P.C. 600 ATLANTIC AVENUE BOSTON MA 02210-2206

MAILED

JAN 18 2012

OFFICE OF PETITIONS

In re Application of

Mechoulam et al. Application No. 11/454,703

Filed: June 16, 2006

Docket No. H0157.70000US01

ON APPLICATION FOR

PATENT TERM ADJUSTMENT

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 C.F.R. 1.705(b), filed January 6, 2012. Applicants submit that the correct patent term adjustment to be indicated on the patent is one thousand two hundred two (1202) days, not eight hundred eighty-eight (888) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). This is true even in this instance where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent or even the filing date of the request for continued examination is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee1.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

For example, if an applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then the applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the \$1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney

Office of Petitions

COMMISSIONER FOR PATENTS UNITED STATES PATENT AND TRADEMARK OFFICE P.O. Box 1450 ALEXANDRIA, VA 22313-1450 www.uspto.gov

Paper No.

CORNING INCORPORATED SP-TI-3-1 CORNING NY 14831

In re Application of

Costello et al.

Application No. 11/454,766

Filed: June 15, 2006

Attorney Docket No. SP05-086

DECISION ON

PETITION

JAN 2 6 2011

MAILED

OFFICE OF PETITIONS

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b), filed December 20, 2010.

:

The petition is GRANTED.

The above-identified application was abandoned for failure to timely file a reply to the final Office action mailed March 5, 2010. This Office action set a shortened statutory period for reply of three (3) months from the mail date of the action. reply received and no extension of time obtained the application became abandoned effective June 6, 2010. A courtesy Notice of Abandonment was mailed on September 16, 2010.

On petition, petitioner submitted a Request for Continued Examination (RCE) and submission under §1.114 (in the form of an amendment) (and RCE fee); paid the petition fee; and made the required statement of unintentional delay.

Technology Center AU 1773 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the RCE and submission submitted on petition filed December 20, 2010.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

tions Attorney

Petitions

	SPE RESPONSE	FOR CERTIFICATE OF CORRECTION
DATE	12/10/10	Paper No.:
TO SPE OF		- Shokla RAM (Spe)
SUBJECT	: Request for Certificate of Corre	Shukla Ram (Spe) ection for Appl. No.: 11 754772 Patent No.: 7805003
	4	CofC mailroom date: 11 22 2010
Dlassa resno	and to this request for a co	ertificate of correction within 7 days.
FOR IFW FIL	•	Stimulie of correction within 7 days.
Please review the IFW appl	 w the requested changes	/corrections as shown in the COCIN document(s) in latter should be introduced, nor should the scope or
•	plete the response (see be ent code COCX.	elow) and forward the completed response to scanning
FOR PAPER	R FILES:	
		/corrections as shown in the attached certificate of (see below) and forward it with the file to:
Rande	icates of Correction Bra olph Square – 9D10-A Location 7580	Certificates of Correction Branch 703-756-1571
Thank You	For Your Assistance	
	for issuing the above-iden the appropriate box.	dentified correction(s) is hereby:
×	Approved	All changes apply.
<i>_</i>	Approved in Part	Specify below which changes do not apply.
۵	Denied	State the reasons for denial below.
Comments:		<u> </u>
		•
		
	ζ,	Tund P.M. Daviel Kolker, 1644
1-306 (PEV 7/03)		SPE SPE Art Unit



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

OGILVY RENAULT LLP 1, Place Ville Marie SUITE 2500 MONTREAL QC H3B 1R1 CA CANADA

MAILED

FEB 232011

PCT LEGAL ADMINISTRATION

In re Application of

RIOUX et al.

Application No.: 11/454,782

Filing Date: June 19, 2006

Attorney Docket No.: 05013967-26US

For: SATELLITE MODEM WITH A

DYNAMIC BANDWIDTH

DECISION ON PETITION

This decision is issued in response to applicant's "Petition to Accept an Uninentionally Delayed Claim under 35 U.S.C. 120, 121, or 365(c) For the Benefit of a Prior Filed Application" dated January 10, 2011 to accept an unintentionally delayed claim under 35 U.S.C. § 120 and 365(c) for the benefit of priority to the prior-filed international application (PCT/CA2004/000584) set forth in the specification filed with the instant application. Because the accompanying amendment also adds a priority claim to a prior filed provisional application, the petition is also being treated as a petition under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application.

The petitions are <u>DISMISSED</u>.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3) and 1.78(a)(6).

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date

Application No.: 11/454,782

the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition does not comply with item (1) above for the following reason:

The amended specification fails to state the relationship of the present application to International Application No. PCT/CA2004/000584 filed April 16, 2004. (See 37 CFR 1.78(a)(2)(i)) The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of International Application No. ---, filed----." A benefit claim that merely states: "This application claims the benefit of International Application No. ---, filed----," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. See MPEP Section 201.11, Reference to Prior Application.

Before the petition under 37 CFR § 1.78(a)(3) and (a)(6) can be granted, a renewed petition and either an Application Data Sheet (37 CFR 1.76(a)(5)) or a proper amendment (complying with the provisions of 37 CFR 1.121) to correct the above matters are required. No additional petition fee is required.

Any questions concerning this matter may be directed to Anthony Smith at (571) 272-3298.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Byan Lin Legal Examiner PCT Legal Administration



MAILED

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAR 242011

PCT LEGAL ADMINISTRATION

OGILVY RENAULT LLP 1, Place Ville Marie SUITE 2500 MONTREAL QC H3B 1R1 CA CANADA

In re Application of

RIOUX et al.

Application No.: 11/454,782

Filing Date: June 19, 2006

Attorney Docket No.: 05013967-26US

For: SATELLITE MODEM WITH A

DYNAMIC BANDWIDTH

DECISION ON PETITION

This decision is issued in response to applicant's "Renewed Petition to Accept an Unintentionally Delayed Claim under 35 U.S.C. 120, 121, or 365(c) and Under 35 U.S.C. 119(E) For the Benefit of a Prior Filed Application" dated February 28, 2011 to accept an unintentionally delayed claim under 35 U.S.C. § 120 and 365(c) for the benefit of priority to the prior-filed international application (PCT/CA2004/000584) and provisional application set forth in the amendment filed with the instant petition.

The petitions under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) are GRANTED.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3) and 1.78(a)(6).

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition complies with the requirements for a grantable petition under 37 CFR §§1.78(a)(3) and 1.78(a)(6) in that (1) a proper reference to the prior-filed applications has been included in an amendment to the first sentence of the specification, as provided by 37 CFR §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 119(e) to the prior-filed applications satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§120 and 365(c) and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition. Any questions concerning this matter may be directed to Anthony Smith at (571) 272-3296. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Bryan Lin

Legal Examiner

Briancin

PCT Legal Administration





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY & POPEO, P.C. **One Financial Center** Boston, MA 02111

MAILED

SEP 2 1 2010

In re Application of

OFFICE OF PETITIONS

David J. Hammond, et al.

DECISION ON PETITION

Application No. 11/454,799

TO WITHDRAW

Filed: June 19, 2006

FROM RECORD

Attorney Docket No. 40924-502002US

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 3, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Sheridan Snedden on behalf of all attorneys of record. All attorneys/agents have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future communications from the Office will be directed to the assignee of the entire interest at the first copied address below until otherwise properly notified by the applicant.

There is an outstanding Office action mailed August 3, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Terri Johnson at 571-272-2991.

Petitions Examiner Office of Petitions

cc:

The American National Red Cross ATTN: Roger Dodd 2025 E Street N.W. Washington D.C. 20006



30623

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Vrignia 22313-1450 www.uspto.gov

APPLICATION NUMBER

FILING OR 371(C) DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

11/454,799

ONE FINANCIAL CENTER BOSTON, MA 02111

06/19/2006

David J. Hammond

40924-502002US CONFIRMATION NO. 8635

POWER OF ATTORNEY NOTICE

Date Mailed: 09/17/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/03/2010.

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C

• The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/tsjohnson/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101



DAVID E. PRITCHARD ATTORNEY AT LAW 3843 DRAKEWOOD DRIVE **CINCINNATI OH 45209**

MAILED

MAR 21 2011

OFFICE OF PETITIONS

In re Application of

Decker

Application No. 11/454,810

Filed: June 16, 2006

Atty. Dkt. No.: JDEC.02US

: DECISION ON PETITION

This decision is in response to the petition under 37 CFR 1.137(b), filed February 14, 2011.

The petition is **GRANTED**.

The application became abandoned August 14, 2010 for failure to timely submit a proper reply to the non-final Office action mailed May 13, 2010. The non-final Office action set a three month shortened statutory period of time for reply. No petition for extension of time under 37 CFR 1.136(a) was timely filed. Notice of Abandonment was mailed February 9, 2010.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been carefully reviewed and found in compliance with the requirements set forth above.

This application is being forwarded to Group Art Unit 3693 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown Attorney Advisor Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MCKENNA LONG & ALDRIDGE LLP 1900 K STREET, NW WASHINGTON, DC 20006

MAILED
JUN 24-2011
OFFICE OF PETITIONS

In re Patent No. 7,635,241

Issue Date: December 22, 2009

Application No. 11/454,865

Filed: June 19, 2006

Attorney Docket No. 8733.1650.00

ON PETITION

This is a decision on the petition, filed May 10, 2011, which is being treated as a request under 37 CFR 3.81(b)¹ to correct the assignee's name on the Fee(s) Transmittal form PTOL-85(b) so that the Letters Patent will issue to the assignee.

The request is **DISMISSED**.

Petitioner states that the assignees names were not correctly identified on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee, as the second and third assignee names, Avaco Co., Ltd and LG Electronics, Inc., were inadvertently not included. Accordingly, petitioner requests that a certificate of correction be issued to reflect the correct assignees on the front page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

After payment of the issue fee: Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a)) and the processing fee set forth in § 1.17(i) of this chapter.

A review of Office database assignment record reflects that an assignment to LG. Philips LCD Co., Ltd., Avaco Co., Ltd and LG Electronics, Inc., has been recorded. The request herein was not accompanied by a certificate of correction as required by 37 CFR 3.81(b). See also MPEP 1481.01. As petitioner has failed to comply with the provisions of 37 CFR 3.81(b), the request cannot be granted at this time.

¹ See MPEP 1309, subsection II and Official Gazette of June 22, 2004

Accordingly, the request cannot be granted until a Certificate of Correction form (PTO/SB/44) is submitted to correct the front page of the Letters Patent to reflect that LG. Philips LCD Co., Ltd., Avaco Co., Ltd and LG Electronics, Inc., were the assignees of record at the time of issuance of the application into a patent.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By Hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

By Internet:

EFS-Web¹

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to Alicia Kelley-Collier at (571) 272-6059.

/Carl Friedman/ Carl Friedman Petitions Examiner Office of Petitions

² www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

UNITED STATES PATENT AND TRADEMARK OFFICE



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MCKENNA LONG & ALDRIDGE LLP 1900 K STREET, NW WASHINGTON DC 20006

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SEP 262011

OFFICE OF PETITIONS

In re Patent No. 7,635,241

Issue Date: December 22, 2009

Application No. 11/454,865 :

Filed: June 19, 2006

Attorney Docket No. 8733.1650.00

ON PETITION

This is a decision on the renewed request filed September 2, 2011, a petition under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **GRANTED**.

The patent file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the Kimberly Inabinet at (571) 272-4618. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (703) 756-1814.

/Carl Friedman/ Carl Friedman Petitions Examiner Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE



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MARGARET ANDERSON 106 E. 6TH STREET, SUITE 900 AUSTIN TX 78701

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MAR 14 2011

OFFICE OF PETITIONS

In re Application of

Jung et al.

Application No. 11/455,001

Filed: June 16, 2006

Attorney Docket No. QQ1-0209US

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 26, 2011.

The request is **NOT APPROVED**.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71, or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.

According to a review of current USPTO records petitioner has not requested the address be changed to a properly recorded assignee or the first listed inventor. The Customer Number 55922 is neither the first named inventor nor the assignee who properly became of record under 37 CFR 3.71 As such, all future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Further, the address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Currently, there is an outstanding Office action mailed October 28, 2010 that requires a reply.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski Petitions Examiner Office of Petitions

cc: LEE & HAYES, PLLC 601 W RIVERSIDE SUITE 1400 SPOKANE, WA 99201





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

FISH & RICHARDSON P.C. (SV) PO BOX 1022 MINNEAPOLIS MN 55440-1022

MAILED NOV 07 2011 OFFICE OF PETITIONS

In re Patent of Ford et al.

Patent No. 7,999,827

Issue Date: August 16, 2011

Application No. 11/455,008

Filed: June 15, 2006

: DECISION ON REQUEST FOR

: RECONSIDERATION OF

: PATENT TERM ADJUSTMENT

Attorney Docket No. 15786-070001

This is a decision on the petition filed on October 17, 2011, under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is. extended or adjusted by seven hundred ninety-eight (798) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED TO THE EXTENT INDICATED** HEREIN.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of six hundred eighteen (618) days.

BACKGROUND

On August 16, 2011, the above-identified application matured into U.S. Patent No. 7,999,827, with a revised patent term adjustment of 645 days. On October 14, 2011, patentees timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 798. Patentees assert the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentees contend that the Office erred in subtracting from the "B delay" a period of time that was not

"consumed by continued examination of the application." Specifically, Patentees argue that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on June 20, 2011, thereby closing examination of the application on that date. Thus, Patentees argue no continued examination took place during the 58 day period from June 20, 2011 (the mailing date of the Notice of Allowance) until August 16, 2011 (the date the patent was issued).

In addition, patentees argue there should be no reduction for time consumed by appellate review by the board of Patent Appeals and Interferences pursuant to 35 U.S.C. 154(b)(1(B)(i). Patentees request removal of the 122 day exclusion for time consumed by appellate review.

As such, Patentees maintain that the "B delay" should include the 58 days from June 20, 2011 until August 16, 2011, the 122 day exclusion for appellate review should be removed and the total B delay be increased from 268 to 326 days.

In addition, in good faith and candor, Patentees disclose an additional period of reduction that was not considered in the PTA calculations. Patentees disclose the Office failed to enter a 29 day reduction pursuant to 37 CFR 1.704(c)(8) for the supplemental reply filed on April 9, 2010, after a reply was filed. Patentees argue no reduction is in order for the reply filed on August 17, 2009, a Monday, in response to a final Office action, mailed May 15, 2009.

Patentees conclude that the correct patent term adjustment is 798 days (the sum of 578 days of "A delay" and 326 days of "B delay" minus 106 days of Applicant delay).

RELEVANT STATUTE AND REGULATIONS WITH RESPECT TO B DELAY ARUGMENT

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including -

- any time consumed by continued examination of the application requested by the applicant under section 132(b);
- (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court;
- (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

- (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
- (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
- (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
- (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
- (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentees' arguments with respect to the B delay calculation have been considered, but not found persuasive. The Office calculated the maximum period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 268 days based on the application having been filed under 35 U.S.C. 111(a) on June 15, 2006 and the patent not having issued as of the day after the three year date, June 16, 2009, and a request for continued examination under 132(b) having been filed on March 11, 2010. In other words, the 58 day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the maximum "B delay" calculation.

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b) 1. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentees do not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of

 $^{^{\}rm I}$ Pursuant to 35 U.S.C. 132(b) , 37 CFR 1.114 provides for continued examination of an application, as follows:

⁽a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in $\S 1.17(e)$ prior to the earliest of:

⁽¹⁾ Payment of the issue fee, unless a petition under § 1.313 is granted;

⁽²⁾ Abandonment of the application; or

⁽³⁾ The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

⁽b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentees' argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to

issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, inter alia, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless The time consumed by prosecution of the of the reason. application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)². Clause (i) specifies "any time consumed by

² Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by

continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Websters Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b) (the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i) -(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in <u>Blacklight Power</u>, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See <u>BlackLight Power</u>, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously

been issued for the application. See <u>In re Drawbaugh</u>, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures³ permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to

Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on March 11, 2010, and the patent issued by virtue of that request on August 16, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on June 20, 2011 and ending on August 16, 2011 is not included in calculating Office delay.

Patentees' determination of the B delay period fails to properly calculate the time excluded from B delay due to appellate review. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a See 35 U.S.C. 134(a). Generally, an appeal notice of appeal. to the Board of Patent Appeals and Interferences ends with a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is 122 days, beginning on August 17, 2009, the date of filing of the notice of appeal and ending on December 16, 2009, the subsequent date of the mailing of a notice of allowance.

Thus, B delay is 146 (268 - 122) days.

It is noted that the Office issued a Notice of proposed rulemaking entitled Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements, 76 FR 18990 (April 6, 2011). To the extent that the final rule on Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review revises the interpretation of appellate review applied in this decision, Patentees are given one (1) month or thirty (30) days, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

The Office has determined that no reduction is warranted for the reply filed on Monday, August 17, 2009, to the final Office action mailed May 15, 2009. The 2 day reduction is being removed.

Patentees are correct that the Office failed enter a reduction for an Information Disclosure Statement filed on April 9, 2010. After applicants filed a reply on March 11, 2010, applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) on April 9, 2010. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS, filed April 9, 2010, reveals that applicants did not include a statement under 37 CFR 1.704(d). Thus, applicants failed to engage in reasonable efforts to conclude prosecution of the application. The period of adjustment should have been reduced by 29 days pursuant to 37 CFR 1.704(c)(8), counting the number of days beginning on the day after the date the initial reply was filed, March 12, 2010, and ending on the date that the IDS was filed, April 9, 2010. Accordingly, a period of reduction of 29 days will be entered.

CONCLUSION

In view thereof, the patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of six hundred eighteen (618) days, which is 578 days of A delay + 146 (268 - 122) days of B delay minus 106 (47 + 29 + 30) days of Applicant delay.

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges receipt of the required \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by six hundred eighteen (618) days.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley Senior Petitions Attorney Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

7,999,827 B2

DATED

August 16, 2011

DRAFT

INVENTOR(S):

Ford et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 645 days

Delete the phrase "by 645 days" and insert – by 618 days--

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

LEE & HAYES, PLLC 601 W RIVERSIDE SUITE 1400 SPOKANE, WA 99201

MAILED

MAR 0 7 2011

OFFICE OF PETITIONS

In re Application of

JUNG, Edward K.Y. et al.

Application No. 11/455,010

Filed: June 16, 2006

Attorney Docket No. QQ1-0073US

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 26, 2011.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that the address has been changed. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Tredelle Jackson at 571-272-2783.

/Tredelle D. Jackson/ Petitions Examiner Office of Petitions

cc: MARGARET ANDERSON

106 E. 6TH STREET, SUITE 900

AUSTIN TX 78701



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

BUSINESS OBJECTS AMERICAS; BUSINESS OBJECTS S.A. SAP AMERICA, INC.; BUSINESS OBJECTS SOFTWARE LTD. BUSINESS OBJECTS DATA INTEGRATION, INC. 777 6TH STREET NW, SUITE 1100, ATTN: B. GALLIANI WASHINGTON DC 20001

MAILED

MAR 282011

OFFICE OF PETITIONS

In re Application of

BELYY, Andrey et al.

Application No. 11/455,035

Filed: June 16, 2006

Attorney Docket No. BOBJ-092/00US 304661-2194

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed March 01, 2011.

The request is **NOT APPROVED**.

The Office will no longer accept address changes to a new practitioner or law firm filed with a Request, absent the filing of a power of attorney to the new representative. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 C.F.R 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor.

Accordingly, the request to withdraw from record cannot be approved because the change of address is not that of: (1) the first named inventor; or (2) an assignee of the entire interest under C.F.R 3.71, who has properly intervened.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-4231.

Michelle R. Eason Paralegal Specialist Office of Petitions





COMMISSIONER FOR PATENTS UNITED STATES PATENT AND TRADEMARK OFFICE P.O. 80x 1450 ALEXANDRIA, VA 22313-1450

Paper No.

LOUIS J. WILLE BRISTOL-MYERS SQUIBB COMPANY PATENT DEPARTMENT P O BOX 4000 PRINCETON NJ 08543-4000

MAILED

SFP 03 2010

OFFICE OF PETITIONS

In re Patent No. 7,632,837 DECISION ON REQUEST

Sun et al. FOR

Issue Date: December 15, 2009: RECONSIDERATION OF Application No. 11/455,039 PATENT TERM ADJUSTMENT

Filed: June 16, 2006

and

Atty Docket No. 10545 NP NOTICE OF INTENT TO ISSUE

CERTIFICATE OF CORRECTION

This is a decision on the petition filed on February 4, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred forty-one (641) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is GRANTED to the extent indicated herein. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred forty-two (642) days.

The over 3 year period for B delay is 182 days, not 181 days. This period is calculated counting the number of days beginning on June 17, 2009, the actual filing date of the application, and ending on December 15, 2009, the date of issuance of the patent.

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given one (1) month or thirty (30) days, whichever is longer,

from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or $\bar{\text{adjusted}}$ by $\bar{\text{six}}$ hundred forty-two (642) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

or Petations Attorney

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

: 7,632,837 B2

DATED

: December 15, 2009

DRAFT

INVENTOR(S): Sun et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [*] Notice: under 35 USC 154(b) by 460 days

Delete the phrase "by 460 days" and insert – by 642 days--



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No.

MCDERMOTT WILL & EMERY LLP 18191 VON KARMAN AVE. SUITE 500

IRVINE CA 92612-7108

In re Application of

Hares et al. Application No. 11/455,078

Filed: June 15, 2006

Attorney Docket No.: 076413-

0011

Title: WIRELESS MESH ROUTING
PROTOCOL UTILIZING HYBRID
LINK STATE ALGORITHMS

MAILED

NOV 0 8 2010

OFFICE OF PETITIONS

DECISION ON PETITION

PURSUANT TO

37 C.F.R. § 1.137(B)

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed May 13, 2010, to revive the above-identified application.

:

This petition pursuant to 37 C.F.R. § 1.137(b) is GRANTED.

The above-identified application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed January 14, 2010, which set a shortened statutory period for reply of three months. No extensions of time are permitted for transmitting issue¹ or publication fees.² Accordingly, the above-identified application became abandoned on April 15, 2010. A Notice of Abandonment was mailed on April 30, 2010.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office

¹ See MPEP § 710.02(e)(III).

² See 37 C.F.R. § 1.211(e).

action or notice, unless previously filed;

- (2) The petition fee as set forth in 37 C.F.R.
 § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this petition, Applicant has submitted the issue, publication, and petition fees, along with the proper statement of unintentional delay. As such, requirements one through three of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.³

The Office of Patent Publication will be notified of this decision so that the present application can be processed into a patent.

It is noted that the address listed on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this application, an acceptable change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/122), may be found at http://www.uspto.gov/web/forms/sb0122.pdf.

It is noted that a Change of Address request was submitted concurrently with this petition, however the request cannot be accommodated, as the signor does not have power of attorney.⁴ A power of attorney has not been located in the electronic file.

³ See Rule 1.137(d).

⁴ See 37 C.F.R. §§ 1.33(a)(2) and (b)(2).

Application No. 11/455,078

Decision on Petition pursuant to 37 C.F.R. § 1.137(b)

It is noted in passing that the Application Data Sheet that was included on filing lists "representative information," however "[p]roviding this information in the application data sheet does not constitute a power of attorney in the application (see § 1.32)."⁵

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Office of Patent Publication in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Office of Patent Publication where that change of status must be effected - the Office of Petitions cannot effectuate a change of status.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225. All other inquiries concerning the status of the application should be directed to the Office of Patent Publication at 571-272-4200.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: Shailesh Mehra
 Perkins Coie LLP
 P.O. Box 1208
 Seattle, Washington 98111-1208

^{5 37} C.F.R. § 1.76(b)(4).

⁶ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.





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FISH & RICHARDSON P.C. (SV) PO BOX 1022 MINNEAPOLIS MN 55440-1022

MAILED MAR 282011 OFFICE OF PETITIONS

In re Patent No. 7,860,691

Beltran et al.

Issue Date: December 28, 2010

Application No. 11/455,288

Filed: June 15, 2006

Attorney Docket No. 15786-

0070002

Title: Dynamic Blocks

: DECISION ON REQUEST FOR

: RECONSIDERATION OF

: PATENT TERM ADJUSTMENT

: AND NOTICE OF INTENT

: TO ISSUE CERTIFICATE OF

: CORRECTION

•

This is a decision on the petition filed on February 25, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by four hundred thirty-two (432) days.

The request for review of the patent term adjustment is **GRANTED** to the extent indicated.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by two hundred ninety (299) days is **GRANTED**.

The period of adjustment to which the patent is entitled under 37 CFR 1.702(a) is 349 days.

The period of adjustment to which the patent is entitled under 37 CFR 1.702(b) is 0 days. The request for continued examination (RCE) in the instant application was filed on March 9, 2009. Accordingly, the instant patent is not entitled to adjustment under 37 CFR 1.702(b) because the period of adjustment for failure to issue the patent within three years of the application filing date cannot include the period of time

Patent No. 7,860,691 Application No. 11/455,288 Page 2 attributable to continued examination. See 35 U.S.C. 154(b)(1)(B)(i).

Patentees informed the Office that an additional reduction of 16 days is warranted.

A review of the record confirms patentees should have been assessed a delay of sixteen (16) days for the submission of a supplemental reply (IDS) on March 25, 2009. 37 CFR 1.704(c) provides that:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

Further, a review of the IDS, filed March 25, 2009, confirms that patentees did not include a statement under 37 CFR 1.704(d). As such, the 16 day delay is calculated beginning on March 10, 2009 the day after the submission of the RCE and amendment on March 9, 2009 and ends on March 25, 2009 the day the supplemental reply, in this instance the IDS was submitted. A 16 day reduction will be entered.

Thus the total reduction for patentees' delay totals 50 (34 + 16) days.

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given one (1) month or thirty (30) days, whichever is longer,

Patent No. 7,860,691 Application No. 11/455,288 Page 3 from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificate of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by two hundred ninety-nine (299) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(d).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3215.

Charlema Grant

Attorney

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

: 7,860,691 B2

DATED

: December 28, 2010

DRAFT

INVENTOR(S): Beltran et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [*] Notice: under 35 USC 154(b) by 315 days

Delete the phrase "by 315 days" and insert – by 299 days--



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MAILED SEP 1 3 2011 OFFICE OF PETITIONS

In re Patent No. 7,860,691

Beltran et al.

Issue Date: December 28, 2010

Application No. 11/455,288

Filed: June 15, 2006

Attorney Docket No. 15786-

0070002

Title: Dynamic Blocks

: DECISION ON REQUEST FOR

: RECONSIDERATION OF

: PATENT TERM ADJUSTMENT

:

This is a decision on the "RESPONSE TO DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION" filed April 28, 2011. Patentees request that the determination of patent term adjustment under 35 U.S.C. § 154(b) be corrected from 299 days to 432 days.

Patentees also request that a decision on this request for reconsideration of patent term adjustment be deferred or delayed until after a final decision has been rendered in <u>Abbott</u> <u>Biotherapeutics Corp v. Kappos</u>, 1:2010cv01853 (D.D.C. 2010). There is no specific regulatory provision for requesting that a petition under 37 CFR 1.705(d) be held in abeyance.

The petition to change patent term adjustment determination under 35 U.S.C. § 154(b) from 299 days to a 432 days is **DENIED**.

BACKGROUND

On December 28, 2010, the above-identified application matured into U.S. Patent No. 7,850,691, with a revised patent term adjustment of 315 days. A petition decision under 37 CFR 1.705(d) mailed on March 25, 2011 reduced the patent term to 299 days. On April 28, 2011, patentees timely submitted this request for reconsideration of patent term adjustment, asserting that the correct number of days of Patent Term Adjustment is 432. Patentees maintain that the Office incorrectly calculated Office

delay pursuant to 37 CFR 1.702(b). Patentees contend that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on August 18, 2010, thereby closing examination of the application on that date. Thus, Patentees argue no continued examination took place during the 133 day period from August 18, 2010 (the mailing date of the Notice of Allowance) until December 28, 2010 (the date the patent was issued). As such, patentees maintain that the "B delay" should include 133 days and be increased from 0 to 133 days. Patentees conclude that the correct patent term adjustment is 432 days (the sum of 349 days of "A delay" and 133 days of "B delay" minus 50 days of applicant delay").

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including -

- any time consumed by continued examination of the application requested by the applicant under section 132(b);
- (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
- (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

- (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
- (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
- (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
- (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
- (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 0 days based on the application having been filed under 35 U.S.C. 111(a) on June 15, 2006 and the patent not having issued as of the day after the three year date, June 16, 2009, and a request for continued examination under 132(b) having been filed on March 9, 2009. In other words, the 133-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)¹. So, with respect to calculating the "B delay" where

Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

⁽a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

⁽¹⁾ Payment of the issue fee, in less a petition under § 1.313 is granted;

applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application The USPTO indicated in September of under 35 U.S.C. 132(b). 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

⁽²⁾ Abandonment of the application; or

⁽³⁾ The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

⁽b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, inter alia, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses $(i)-(ii)^2$. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time

² Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Websters Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether

it appears that the applicant is entitled to a patent under the See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in <u>Blacklight Power</u>, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See <u>BlackLight Power</u>, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See <u>In re Drawbaugh</u>, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures³ permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination,

Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

Patent No. 7,860,691 Application No. 11/455,288 Page 10

in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

CONCLUSION

For the above-stated reasons, a review of the petition and file wrapper of the above-identified patent reveals that the above-identified patent is not entitled to a patent term extension or adjustment of 432 days. Therefore, the petition to change the patent term adjustment indicated on the above-identified patent to 432 days is **denied**.

This decision may be viewed as final agency action. See MPEP \$ 1002.02(b).

Telephone inquiries specific to this matter should be directed to Charlema Grant, Petitions Attorney at (571) 272-3215.

Anthony Knight

Director

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

EDWIN H. CRABTREE SUITE 575 3773 CHERRY CREEK N. DR. DENVER, CO 80209

MAILED

JUN 012011

In re Application of

Hill et al.

Application No. 11/455,438

Filing: June 19. 2006

Attorney Docket No. OILSHALE-APP

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition under 37 CFR 1.102(c)(1), filed June 19, 2006, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section IV: Applicant's Age must be accompanied by evidence showing that at least one of the applicants is 65 years of age, or more, such as a birth certificate or a statement by applicant. No fee is required.

The instant petition includes a statement by the applicant that he is over 65 years of age. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-6059. All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

This application file is being referred to the Office of Data Management for further processing.

In-Caller

Alicia Kelley-Coller Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

JOHN LEZDEY 2875 MCI DRIVE PINELLAS PARK FL 33782

MAILED

NOV 22 2010
OFFICE OF PETITIONS

In re Application of

W. Novis Smith, et al.

Application No. 11/455,447

Filed: June 19, 2006

Attorney Docket No. 1111-20

DECISION ON PETITION

TO MAKE SPECIAL UNDER

37 CFR 1.102(c)(1)

This is a decision on the petition under 37 CFR 1.102(c)(1), filed October 22, 2010, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section IV: Applicant's Age must be accompanied by evidence showing that at least one of the applicants is 65 years of age, or more, such as a birth certificate or a statement by applicant. No fee is required

The instant petition includes a statement from the attorney of record declaring that he/she is in possession of evidence, and will retain such in the application file record showing that the inventor, Novis Smith is 65 years of age or older. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to Terri Johnson at 571-272-2991.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application is being forwarded to the Technology Center Art Unit 1793 for action on the merits commensurate with this decision.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
www.usbb.gov

JOHN LEZDEY & ASSOCIATES 2401 West Bay Drive Suite 118 Largo FL 33770

MAILED

JUN 22 2011

OFFICE OF PETITIONS

In re Application of

Smith et al.

Application No. 11/455,447

DECISION ON PETITION

Filed: 06/19/2006

Attorney Docket No. 1111-20

This is a decision on the petition under 37 CFR 1.181, filed June 13, 2011, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the non-final Office action mailed June 27, 2008, which set a three month shortened statutory period for reply. A Notice of Abandonment was mailed on January 30, 2009.

The practitioner asserted that he did not receive the non-final Office action of June 27, 2008, because it was mailed to an incorrect correspondence address. The practitioner stated that he mailed a change of correspondence address to the USPTO on July 30, 2007; however, the address was not updated in the USPTO records. Additionally, the practitioner stated that he sent the Office three requests for status of the application after submitting a change of correspondence address.

A review of the written record indicates an irregularity in the mailing of the non-final Office action of June 27, 2008. On August 3, 2007, prior to the mailing of the non-final Office action, the USPTO received a request to change the correspondence address of record. The USPTO records were not timely updated to reflect this new change of correspondence address. Consequently, the USPTO mailed the non-final Office action to an incorrect address.

As the Office action was mailed to an incorrect address, the holding of abandonment is withdrawn. The application is hereby restored to pending status.

Technology Center Art Unit 1793 has been advised of this decision. The matter is being referred to the Technology Center's technical support staff for re-mailing of the non-final Office action. The three-month shortened statutory period for responding to the non-final Office action will be set to run from the date of the re-mailing of the Office action.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell Senior Petitions Attorney

C. P. Donnell

Office of Petitions





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No.

LAW OFFICES OF KHALILIAN SIRA, LLC 9100 PERSIMMON TREE ROAD POTOMAC MD 20854

MAILED

FEB 28 2011

OFFICE OF PETITIONS

In re Application of :

Kane et al. : ON PETITION

Application No. 11/455,502

Filed: Juné 19, 2006

Attorney Docket No. 21273-601 :

This is in response to the PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW ABANDONMENT FOR FAILURE TO RECEIVE AN OFFICE ACTION filed December 22, 2010.

The petition is DISMISSED.

Any request for reconsideration pursuant to § 1.181 must be filed within **TWO (2) MONTHS** of the date of this decision in order to be considered timely. See 37 CFR §1.181(f). Extensions of time under §1.136(a) are not permitted.

The above-identified application became abandoned for failure to file a response to the restriction requirement mailed November 5, 2009. This Notice set a one-month period for reply, with extensions of time obtainable under § 1.136(a). No response was received and no extension of time was obtained. Accordingly, the application became abandoned effective December 6, 2009. A courtesy Notice of Abandonment was mailed on June 17, 2010.

Petitioner maintains that the restriction requirement was not received at the correspondence address of record. In support of the petition, enclosed is a copy of the computerized master case report for all incoming Notice of Non-Compliant Amendments from April 1, 2010 through June 1, 2010; and a computerized record for the subject application.

A review of the application image file wrapper reveals no irregularities in the mailing of the Office action mailed

November 5, 2009. Thus, there is a strong presumption that the correspondence was properly mailed to the applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Notice, applicant must submit evidence to overcome this presumption. As stated in MPEP 711.03(c), the following showing is required:

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Petitioner's showing is not adequate. Practitioner submits a copy of the record where the non-received Office action would have been entered had it been received. Practitioner describes their system of docketing. Practitioner submits the docket record for this client. However, the showing of non-receipt requires that applicant submit a copy of the master docket report showing all replies docketed for the relevant reply Practitioner states that an electronic calendar is maintained that includes all upcoming due dates and absolute deadlines for other clients as well as this client. However, practitioner states he is not submitting a copy of the calendar for confidentiality reasons. This is not acceptable. Of course, practitioner is not required to breach confidentiality to meet Nonetheless, practitioner does not show that he is the showing. precluded from submitting a master docketing record with

information identifying other clients redacted to protect confidentiality.

Further, practitioner is reminded that the showing of non-receipt requires that practitioner state that he searched the file jacket and docket records. Practitioner does not make such a statement.

Thus, on renewed petition, petitioner needs to submit a copy of the master docket and state that he searched the file jacket and docket records and they show the Office action was not received.

Alternatively, applicants may submit a petition to revive pursuant to 37 CFR 1.137(b). 37 CFR 1.137(b) provides that:

If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application A grantable petition pursuant to this paragraph must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any terminal disclaimer (and fee as set forth in \$1.20(d)) required pursuant to paragraph (d) of this section.

Further correspondence with respect to this decision should be addressed as follows:

By mail:

Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450 By fax:

(571) 273-8300

ATTN: Office of Petitions

By hand:

Customer Service Window

Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson

Senior Petitions Attorney

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

COLGATE-PALMOLIVE COMPANY 909 RIVER ROAD PISCATAWAY, NJ 08855

MAILED

DEC 15 2010

OFFICE OF PETITIONS

In re Application of Frank J. Prineppi

Application No.: 11/455,534

ON PETITION

Filed: June 19, 2006

Attorney Docket No.: 7545-03-TB

This is a decision on the petition, filed December 14, 2010, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED**.

37 CFR 1.313(c) provides that:

Once the issue fee has been paid, the application will not be withdrawn from issue upon petition by the applicant for any reason except:

- (1) Unpatentability of one of more claims, which petition must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
- (2) Consideration of a request for continued examination in compliance with 37 CFR 1.114; or
- (3) Express abandonment of the application. Such express abandonment may be in favor of a continuing application.

The circumstances of the above-identified application do not fall within any of exceptions enumerated in 37 CFR 1.313(c).

It is noted that the petition includes a request for a RCE under 37 CFR 1.114; however, the submission entitled "Statement Accompanying a Request for Continued Examination" does not comply with the requirements under 37 CFR 1.114(c). Consequently, the RCE is improper and the petition under 37 CFR 1.313(c) cannot be granted. The \$810 fee paid for the improper RCE is subject to refund upon request.

Since the issue fee has already been paid in this application, petitioner may wish to file a request under 37 CFR 3.81(b) to delete the erroneously named assignee by way of a certificate of correction. Any request under 37 CFR 3.81(b) must include the \$130 processing fee, a request for a certificate of correction and the \$100 fee therefor.

The present petition is not prejudice to reconsideration upon the filing of a proper petition to withdraw from issue under the provisions of 37 CFR 1.313. Petitioner is reminded that the filing of any renewed petition to withdraw from issue may not be recognized or effective if not received by the appropriate deciding official in time to act prior to issuance. *Note* 37 CFR 1.313(d). It is recommended that the facsimile number listed below be used to file any renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop PETITIONS
Commissioner for Patents

Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 40l Dulany Street Alexandria, VA 22314

By fax:

(571) 273-0025 Office of Petitions

/SDB/

Sherry D. Brinkley Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

COLGATE-PALMOLIVE COMPANY 909 RIVER ROAD PISCATAWAY NJ 08855

MAILED

DEC 2 7 2010
OFFICE OF PETITIONS

In re Application of

Frank J. Prineppi

Application No. 11/455,534 : DECISION GRANTING PETITION

Filed: June 19, 2006 : UNDER 37 CFR 1.313(c)(3)

Attorney Docket No. 7545-03-TB

This is a decision on the renewed petition, filed December 23, 2010, under 37 CFR 1.313(c)(3) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

Petitioner requests that the above-identified application be withdrawn from issue for express abandonment. See 37 CFR 1.313(c)(3).

The application is hereby withdrawn from issue, and the abandonment is hereby recognized.

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

SIEMENS CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 170 WOOD AVENUE SOUTH ISELIN NJ 08830

MAILED

OCT 12 2010

In re Application of Desgranges, et al.

OFFICE OF PETITIONS

Application No. 11/455,627

ON PETITION

Filed: June 19, 2006

Attorney Docket No. 2005P12500 US01

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 13, 2010, to revive the above-identified application.

The petition is GRANTED.

The application became abandoned June 12, 2010 for failure to timely submit a proper reply to the final Office action mailed December 11, 2009. The final Office action set a three month shortened statutory period of time for reply. A three month extension of time was procured pursuant to 37 CFR 1.136. Notice of Abandonment was mailed July 13, 2010.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), including fee and submission required by 37 CFR 1.114; (2) the required petition fee; and (3) a proper statement of unintentional delay.

This application is being referred to Technology Center AU 2628 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown Petitions Attorney Office of Petitions



COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK DFFIC
P.O. BOX 1451
ALEXANDRIA, VA 22313-145

MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON DC 20004

MAILED
MAR 1 1 2011
OFFICE OF PETITIONS

In re Application of

Cho, et al.

: DECISION ON PETITION

Application No. 11/455,724

Filed: June 20, 2006

Atty. Dkt. No.: 054358-5231

This decision is in response to the petition under 37 CFR 1.137(b), filed February 9, 2011.

The petition is **GRANTED**.

The application became abandoned August 7, 2010 for failure to timely submit a proper reply to the non-final Office action mailed May 6, 2010. The non-final Office action set a three month shortened statutory period of time for reply. No petition for extension of time under 37 CFR 1.136(a) was timely filed. Notice of Abandonment was mailed January 3, 2011.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been carefully reviewed and found in compliance with the requirements set forth above.

This application is being forwarded to Group Art Unit 2629 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown Attorney Advisor Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10/06/11

TO SPE OF : ART UNIT _____2628__

SUBJECT: Request for Certificate of Correction for Appl. No.: 11455885 Patent No.: 7692656

CofC mailroom date: 09/28/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC) Randolph Square – 9D10-A Palm Location 7580

You can fax the Directors SPE response to 571 273 3421

Note: Should the changes to claims 6 and 10 be approved?



Certificates of Correction Branch

<u>571-272-3421</u>

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

SPE RESPONS	SE FOR CERTIFICATE OF CORRECTION	
X Approved	All changes apply.	
☐ Approved in Part	Specify below which changes	s do not apply.
☐ Denied	State the reasons for denial I	oelow.
Comments: The corrections filed 28.5	September 2011 does not change the scope	of the claims.
	SPE	2628 Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10/06/11

TO SPE OF : ART UNIT ____2628__

SUBJECT: Request for Certificate of Correction for Appl. No.: 11455885 Patent No.: 7692656

CofC mailroom date: 09/28/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

You can tax the Directors SPE response to 571 279 3421

Note: Should the changes to claims 6 and 10 be approved?



Certificates of Correction Branch

<u>571-272-3421</u>

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

SPE RES	SPONSE FOR CERTIFICATE OF CORRECTION	
X Approved	All changes apply.	
□ Approved in Pa	Specify below which ch	nanges do not apply.
☐ Denied	State the reasons for d	enial below.
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	ied 28 September 2011 does not chande the	scope of the claims.
omments: <u>The corrections til</u>	-	
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Alexandria, VA 22313-1450
www.uspto.gov

DAVID ANDREW D'ZMURA P.O. BOX 1845 BORREGO SPRINGS, CA 92004-1845 MAILED DEC 1 0 2010

OFFICE OF PETITIONS

In re Patent of D'Zmura

Patent No. 7,357,638

Issue Date: April 15, 2008

Application No. 11/455,901

Filing Date: June 19, 2006

For: Astrological Horoscopes

Decision on Petition

This a decision in response to the petition filed June 25, 2010, which is being treated as a petition under 37 C.F.R. § 1.182 requesting issuance of duplicate letters patent.

The petition under 37 C.F.R. § 1.182 is dismissed as moot.

Petitioner has filed a single petition. The petition requests the Office:

- 1. Issue duplicate letters patent for all of Petitioner's patents,
- 2. Withdraw the holding of abandonment for all of Petitioner's abandoned divisional and provisional applications, and
- 3. "Advise the US Dept. Commerce, US Treasury and Executive Cabinet to License ... my Intangible Wealth." 1

When a party wishes to address an issue involving more than one application or patent, a separate petition <u>must</u> be filed in each of the applications or patents. As a courtesy, the Office has taken steps resulting in a copy of the petition being placed in each of the patent files. However, if Petitioner wishes to request reconsideration of more than one of the decisions, a separate request must be filed for each patent.

Duplicate Letters Patent

The Office mailed the original letters patent on April 15, 2008. The United States Postal Service subsequently returned the letters patent to the Office undelivered.

Office records indicate the Office mailed new letters patent to Petitioner on June 25, 2010. Therefore, the request for issuance of duplicate letters patent is dismissed as moot.

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¹ Page 12.

The Abandoned Status of Multiple Applications

The petition requests the Office withdraw the holding of abandonment for all of Petitioner's abandoned divisional and provisional applications.

Based on Office records, Petitioner's divisional applications appear to consist of Application No. 10/509,085 and Application Nos. 10/681,356 to 10/681,367. Petitioner appears to have filed about 16 provisional applications.

The Office will not consider the request to withdraw the holding of abandonment in the divisional applications and the provisional applications, because petitions to withdraw the holding of abandonment do not appear to have been in any of the cases.

If petitioner wishes to argue the holding of abandonment should be withdrawn for a specific application, a petition to withdrawn the holding of abandonment must be filed in that specific application. If Petitioner wishes to argue the holding of abandonment should be withdrawn for multiple applications, separate petitions must be filed in each application.

Request for the Office to Advise Agencies to License Patent

In general, each federal agency within the United States makes the agency's own decisions with respect to the purchase and/or licensing of patents and the United States Patent and Trademark Office does not have the authority to force other agencies to license a patent. Therefore, the Office is unable to advise the Department of Commerce or any other agency to license the patent.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.182."

Further correspondence with respect to this matter may be submitted as follows:

By mail:

Mail Stop Petition

By facsimile: (571) 273-8300

Commissioner for Patents

Attn: Office of Petitions

P.O. Box 1450

Alexandria, VA 22313-1450

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley Senior Petitions Attorney

Office of Petitions

COLUMN SECTION OF THE OFFICE O

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

MCKENNA LONG & ALDRIDGE LLP 1900 K STREET, NW WASHINGTON DC 20006

MAILED

JAN 13 2012

OFFICE OF PETITIONS

In re Application of

Kim et al.

Application No. 11/455930

Filing or 371(c) Date: 06/20/2006

Patent No.: 7927045

Issue Date: 04/19/2011

Attorney Docket Number: 8733.1649.00

DECISION ON PETITION

This is a decision on the "Request for Correction of Assignee Under 3.81(b)," filed December 9, 2011, to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The Petition is granted.

The petition was accompanied by a certificate of correction as required by 3.81(b), and the fee submitted with the present petition. Further, Office assignment records reflect that AVACO Co., Ltd., and LG ELECTRONICS, Inc., are also assignees of record. As the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to be processed.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a certificate of correction after issuance of this application into a patent.

/DLW/ .

Derek L. Woods Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

ROSENBAUM & SILVERT, P.C. 1480 TECHNY ROAD NORTHBROOK IL 60062

MAILED

JUN 2 1 2011

OFFICE OF PETITIONS

In re Application of

Tom Slater, et al.

Application No. 11/456,018

Filed: July 6, 2006

Attorney Docket No. 6088-006

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 11, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 23, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is April 24, 2009. The Notice of Abandonment was mailed August 20, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$405, and the submission required by 37 CFR 1.114; (2) the petition fee of \$810; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-2991.

This application is being referred to Technology Center AU 3671 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions

	STE HEST VIVELS	OR CERTIFICATE OF CORRECTION Paper No.:
DATE	: 05-03-11	
O SPE OF	: ART UNIT1623	
SUBJECT	: Request for Certificate of Correc	tion for Appl. No.: 11/456123 Patent No.: 7582664
		CofC mailroom date: 04-27-11
Please respo	and to this request for a cer	tificate of correction within 7 days.
FOR IFW FIL		·
the IFW appl meaning of t	lication image. No new ma he claims be changed.	corrections as shown in the COCIN document(s) in atter should be introduced, nor should the scope or
Please compusing docum	plete the response (see bel	ow) and forward the completed response to scanning
FOR PAPER	R FILES:	
Please revier correction. F	w the requested changes/o Please complete this form (corrections as shown in the attached certificate of (see below) and forward it with the file to:
Rande	icates of Correction Brar olph Square – 9D10-A Location 7580	Angela Green Certificates of Correction Branch (703) 756-1541
Thank You	For Your Assistance	
The request		entified correction(s) is hereby:
The request	t for issuing the above-id	entified correction(s) is hereby: All changes apply.
The request Note your decision XXXX	t for issuing the above-id on the appropriate box.	
The request Note your decision XXXX	t for issuing the above-id on the appropriate box. Approved	All changes apply.
The request Note your decision XXXX	Approved in Part Denied The C of C has be	All changes apply. Specify below which changes do not apply. State the reasons for denial below.
The request Note your decision XXXX	Approved in Part Denied The C of C has be	All changes apply. Specify below which changes do not apply. State the reasons for denial below.
The request Note your decision XXXX	Approved in Part Denied The C of C has be	All changes apply. Specify below which changes do not apply. State the reasons for denial below.

PTOL-306 (REV. 7/03)



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

ADRIAN SCHAUER 305-411 RICHMOND ST. E TORONTO ON M5A 3S5 CA CANADA

MAILED

DEC 07 2010

OFFICE OF PETITIONS

In re Application of Adrian Schauer

Application No. 11/456,162

Filed: July 7, 2006

Title: Method And System For Work Shift Resolution Using Mobile Messaging And

Email

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 27, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice Requiring Excess Claims Fees mailed, June 30, 2010. The Notice set a period for reply of one (1) month from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on July 31, 2010. A Notice of Abandonment was mailed on October 21, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the \$221.00 Excess Claims fees; (2) the petition fee of \$810.00, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Technology Center AU 3623 for appropriate action by the Examiner in the normal course of business on the reply received June 24, 2010.

Joan Olszewski Petitions Examiner Office of Petitions

DATE	:January 26, 2011	
TO SPE OF	: ART UNIT <u>2812</u>	
SUBJECT	: Request for Certificate of Cor	rection for Appl. No.: 11/456301 _ Patent No.: 7534634
	•	CofC mailroom date: 3-10-10
Please resp	ond to this request for a c	certificate of correction within 7 days.
FOR IFW F	ILES:	
the IFW app	ew the requested changes plication image. No new n the claims be changed.	s/corrections as shown in the COCIN document(s) in matter should be introduced, nor should the scope or
Please com using docur	plete the response (see benefit code COCX.	elow) and forward the completed response to scanning
FOR PAPE	R FILES:	•
Please revie	ew the requested changes	s/corrections as shown in the attached certificate of (see below) and forward it with the file to:
	•	•
Certi Rand Palm	ficates of Correction Bra lolph Square – 9D10-A Location 7580	•
Certi Rand	ficates of Correction Bra lolph Square – 9D10-A	anch (CofC)
Certi Rand Palm	ficates of Correction Bra lolph Square – 9D10-A	ench (CofC) Magdalene Talley
Certi Rand Palm Note:	ficates of Correction Bra lolph Square – 9D10-A	Magdalene Talley Certificates of Correction Branch
Certi Rand Palm Note: Thank You	ficates of Correction Bra dolph Square – 9D10-A Location 7580 For Your Assistance	Magdalene Talley Certificates of Correction Branch
Certi Rand Palm Note: Thank You The reques	ficates of Correction Bra dolph Square – 9D10-A Location 7580 For Your Assistance at for issuing the above-i	Magdalene Talley Certificates of Correction Branch 571-272-0423
Certi Rand Palm Note: Thank You The reques Note your decision	ficates of Correction Bradolph Square – 9D10-A Location 7580 For Your Assistance at for issuing the above-in on the appropriate box.	Magdalene Talley Certificates of Correction Branch 571-272-0423 dentified correction(s) is hereby:
Certi Rand Palm Note: Thank You The reques Note your decision	ficates of Correction Bradolph Square – 9D10-And Location 7580 For Your Assistance et for issuing the above-in on the appropriate box. Approved	Magdalene Talley Certificates of Correction Branch 571-272-0423 dentified correction(s) is hereby: All changes apply.
Certi Rand Palm Note: Thank You The reques Note your decision	ficates of Correction Bradolph Square – 9D10-A Location 7580 For Your Assistance of to issuing the above-in on the appropriate box. Approved Approved in Part Denied	Magdalene Talley Certificates of Correction Branch 571-272-0423 dentified correction(s) is hereby: All changes apply. Specify below which changes do not apply.
Certi Rand Palm Note: Thank You The reques Note your decision	ficates of Correction Bradolph Square – 9D10-A Location 7580 For Your Assistance of to issuing the above-in on the appropriate box. Approved Approved in Part Denied	Magdalene Talley Certificates of Correction Branch 571-272-0423 dentified correction(s) is hereby: All changes apply. Specify below which changes do not apply.
Certi Rand Palm Note: Thank You The reques Note your decision	ficates of Correction Bradolph Square – 9D10-A Location 7580 For Your Assistance of to issuing the above-in on the appropriate box. Approved Approved in Part Denied	Magdalene Talley Certificates of Correction Branch 571-272-0423 dentified correction(s) is hereby: All changes apply. Specify below which changes do not apply.
Certi Rand Palm Note: Thank You The reques Note your decision	ficates of Correction Bradolph Square – 9D10-A Location 7580 For Your Assistance of to issuing the above-in on the appropriate box. Approved Approved in Part Denied	Magdalene Talley Certificates of Correction Branch 571-272-0423 dentified correction(s) is hereby: All changes apply. Specify below which changes do not apply.
Certi Rand Palm Note: Thank You The reques Note your decision	ficates of Correction Bradolph Square – 9D10-A Location 7580 For Your Assistance of to issuing the above-in on the appropriate box. Approved Approved in Part Denied	Magdalene Talley Certificates of Correction Branch 571-272-0423 dentified correction(s) is hereby: All changes apply. Specify below which changes do not apply.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION			
DATE	:11/08/11		
TO SPE OF	: ART UNIT		
SUBJECT	: Request for Certificate of Correction for Appl. No.: 11456321 Patent No.:	7488708	

CofC mailroom date: 11/01/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC) Randolph Square – 9D10-A Palm Location 7580

Note: Should the changes to claim 4 be approved?

<u> Lamonte Newsome</u>

Certificates of Correction Branch 571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

SPE	RESPONSE FOR C	ERTIFICATE OF CORRECTION	
X Approved		All changes apply.	
	. Down		
☐ Approved in	Part	Specify below which change	s do not apply.
			·
□ Denied		State the reasons for denial	below.
Comments: OK to enter ch	anges		
·			
·			
		/Harold Pyon/	
•	/Harold Pyon/	SPE	Art Unit 1761

	SPE RESPONSE FOR CER	TIFICATE OF CORRECTION	
DATE	5/27/11		
TO SPE OF	: ART UNIT		
SUBJECT	: Request for Certificate of Correction for A	Appl. No.: <u>11456345</u>	Patent No.: 7589201
		CofC mailroom	date: 5/20/11
Please resp	oond to this request for a certificate	of correction within 7 days.	
FOR IFW F	ILES:		
the IFW ap	ew the requested changes/correcti plication image. No new matter sh the claims be changed.		
	nplete the response (see below) an ment code COCX.	d forward the completed res	ponse to scanning
FOR PAPE	R FILES:		
Rand Palm		e to 571-273-3421	tion Branch
		<u>571-272-342</u>	<u> </u>
The reques	ı For Your Assistance st for issuing the above-identifie	d correction(s) is hereby:	
Note your decision	on on the appropriate box. Approved	All changes apply.	
<u>.</u>	• •	Specify below which change	es do not apply
_	Approved in Part		• • •
L] Denied	State the reasons for denial	Delow.

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

Comments:		
- · · · · · · · · · · · · · · · · · · ·		:
	JAMES O. WIL	SON
	JAMES O. WILL SUPERVISORY PATENT TECHNOLOGY SEM	FEXAMINER TER 1600
	TECHNOLOGICA	
	(Alless)	1624
	•	





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

HITT GAINES, PC ALCATEL-LUCENT PO BOX 832570 RICHARDSON TX 75083

MAILED
SEP 2 0 2010
OFFICE OF PETITIONS

In re Application of

Hock Min Ng

Application No. 11/456,428

Filed: September 10, 2006

Attorney Docket No. NG 12

DECISION GRANTING PETITION

UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, September 17, 2010 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on September 13, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.¹

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2891 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

Terri Johnson

Petitions Examiner Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

KIRTON AND MCCONKIE 60 EAST SOUTH TEMPLE, SUITE 1800 SALT LAKE CITY, UT 84111

MAILED

AUG 3 0 2010

OFFICE OF PETITIONS

In re Application of Larry D. Hansen

Application No. 11/456,514

Filed: July 10, 2006

Attorney Docket No. 14121.2

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 8, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed December 11, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 12, 2009.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1).

The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). Since the amendment submitted does not prima facie place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b). An advisory action accompanies this decision.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642

Office of Petitions

Attachment: Advisory Action

	Application No.	Applicant(s)				
Advisory Action	11/456,514	HANSEN, LARRY D.				
Before the Filing of an Appeal Brief	Examiner	Art Unit				
	RYAN D. DONLON	3695				
The MAILING DATE of this communication appe	ars on the cover sheet with the c	orrespondence address				
THE REPLY FILED <u>08 July 2010</u> FAILS TO PLACE THIS APP	LICATION IN CONDITION FOR AL	LOWANCE.				
1. The reply was filed after a final rejection, but prior to or or this application, applicant must timely file one of the follow places the application in condition for allowance; (2) a Not a Request for Continued Examination (RCE) in compliant time periods:	wing replies: (1) an amendment, aff otice of Appeal (with appeal fee) in (idavit, or other evidence, which compliance with 37 CFR 41.31; o	or (3)			
a) The period for reply expiresmonths from the mailin	g date of the final rejection.					
b) The period for reply expires on: (1) the mailing date of this A no event, however, will the statutory period for reply expire I	ater than SIX MONTHS from the mailing	g date of the final rejection.				
TWO MONTHS OF THE FINAL REJECTION. See MPEP 7 Extensions of time may be obtained under 37 CFR 1.136(a). The date have been filed is the date for purposes of determining the period of exunder 37 CFR 1.17(a) is calculated from: (1) the expiration date of the set forth in (b) above, if checked. Any reply received by the Office late.	Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee hade 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as let forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).					
2. The Notice of Appeal was filed on A brief in comp filing the Notice of Appeal (37 CFR 41.37(a)), or any exte a Notice of Appeal has been filed, any reply must be filed AMENDMENTS	nsion thereof (37 CFR 41.37(e)), to	avoid dismissal of the appeal. S				
3. The proposed amendment(s) filed after a final rejection,	but prior to the date of filing a brief.	will not be entered because				
(a) ⊠ They raise new issues that would require further co						
(b) They raise the issue of new matter (see NOTE below			_			
(c) ☐ They are not deemed to place the application in be appeal; and/or	tter form for appeal by materially re	ducing or simplifying the issues for	or			
(d) X They present additional claims without canceling a		ected claims.				
NOTE: <u>see claim 26</u> . (See 37 CFR 1.116 and 41.		" (DTOL 004)				
 The amendments are not in compliance with 37 CFR 1.1 Applicant's reply has overcome the following rejection(s) 		mpliant Amendment (P10L-324)	١.			
6. ☐ Newly proposed or amended claim(s) would be a		timely filed amendment canceling	g the			
non-allowable claim(s).						
 For purposes of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected is pro 		ll be entered and an explanation (of			
The status of the claim(s) is (or will be) as follows:	· appointed.					
Claim(s) allowed: Claim(s) objected to:						
Claim(s) objected to: Claim(s) rejected: <u>7-25</u> .						
Claim(s) withdrawn from consideration:						
AFFIDAVIT OR OTHER EVIDENCE	ut hafara ar an tha data of filing a N	ation of Annual will not be entored	d			
 The affidavit or other evidence filed after a final action, be because applicant failed to provide a showing of good an was not earlier presented. See 37 CFR 1.116(e). 	d sufficient reasons why the affiday	rit or other evidence is necessary	and			
9. The affidavit or other evidence filed after the date of filing entered because the affidavit or other evidence failed to showing a good and sufficient reasons why it is necessar	overcome <u>all</u> rejections under appe y and was not earlier presented. S	al and/or appellant fails to provide ee 37 CFR 41.33(d)(1).	e a			
10. ☐ The affidavit or other evidence is entered. An explanation REQUEST FOR RECONSIDERATION/OTHER	n of the status of the claims after e	ntry is below or attached.				
11. The request for reconsideration has been considered bu See Continuation Sheet.	t does NOT place the application in	n condition for allowance because	e :			
12. Note the attached Information <i>Disclosure Statement</i> (s). 13. Other:	(PTO/SB/08) Paper No(s).					
·	/R. D. D./ Examiner, Art Unit 3695					

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Continuation Sheet (PTO-303)

Continuation of 11. does NOT place the application in condition for allowance because: Applicants amendments would require further search and consideraiton and potentially raise issues of new matter.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

KIRTON AND MCCONKIE 60 EAST SOUTH TEMPLE, SUITE 1800 SALT LAKE CITY, UT 84111

MAILED

DEC 2 0 2010

OFFICE OF PETITIONS

In re Application of

Larry D. Hansen Application No. 11/456,514

Filed: July 10, 2006

Attorney Docket No. 14121.2

ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed October 29, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of December 11, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is March 12, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$405, and the submission required by 37 CFR 1.114; (2) the petition fee of \$810; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 3695 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

April M. Wise

Peritions Examiner
Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Decision Date: June 14,2011

In re Application of : DECISION ON PETITION

James Morrow

Application No: 11456541

Filed: 10-Jul-2006

Attorney Docket No: 83336.1135

This is an electronic decision on the petition, filed June 14,2011 ,which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is **GRANTED.**

Petitioner states that the present nonprovisional application is the subject of a foreign or international application filed on

07-09-2007

However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by:

- (1) the reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required notice of a foreign or international filing from the due date for the required notice until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date will be viewable in Private PAIR within one (1) business day.

This application file is being directed to the Office of Data Management.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions

		PTO/SB/64a		
Doc Code: PET.AUTO		U.S. Patent and Trademark Office		
Document Description: Petition auto	matically granted by EFS-Web	Department of Commerce		
Electronic Petition Request	PETITION FOR REVIVAL OF AN APPLICATION FOR REVIVAL OF AN APPLICATION OF A LIBERT STREET TO STREET THE OFFICE OF A LIBERT STREET TO STREET THE OFFICE OF A LIBERT STREET STREET THE OFFICE OF A LIBERT STREET STREET THE OFFICE OF A LIBERT STREET ST			
Application Number	11456541			
Filing Date	10-Jul-2006			
First Named Inventor	James Morrow			
Art Unit	3714			
Examiner Name	ROSS WILLIAMS			
Attorney Docket Number	83336.1135			
Title	Universal Game Monitoring Unit and Sy	rstem		
of the filing of an application in a for eighteen months after filing. The dis 35 U.S.C. 122(b)(2)(B)(iii). PURSUANT TO 37 CFR 1.137(f), APP A grantable petition requires the for (1) Petition fee; (2) Reply; (3) Statement that the entire delay	reign country or under a multinational trea ate of abandonment is the day after the exp LICANT HEREBY PETITIONS FOR REVIVAL OF Ilowing items:	2(b)(2)(B)(iii) for failure to timely notify the Office ty that requires publication of applications biration date of the forty-five (45) day period set in THIS APPLICATION UNDER 37 CFR 1.137(b).		
Petition fee The petition fee under 37CFR 1.17(m) is attached.			
Applicant claims SMALL EN	Applicant claims SMALL ENTITY status. See 37 CFR 1.27.			
Applicant is no longer clair	ning SMALL ENTITY status. See 37 CFR 1.27	(g)(2).		
Applicant(s) status remains	s as SMALL ENTITY.			
Applicant(s) status remains	s as other than SMALL ENTITY.			
Notice of Foreign or International Filing (35 U.S.C. 122(b)(2)(B)(iii) and 37 CFR 1.213(c)) Subsequent to the filing of the above-identified application, an application was filed in another country, or under a multinational international treaty (e.g., filed under the Patent Cooperation Treaty), that requries publication of applications eighteen months after the filing. The filing date of the subsequently filed foreign or international application is 07-09-2007				
☑ The non-publication request has been filed on 10-Jul-2006				

	STATEMENT: The entire delay in filing the required notice of a foreign or international filing from the due date for the required notice until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.				
THIS PORTION MUST BE COMP	THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES				
I certify, in accordance with 37 CFR 1.4(d)(4) that I am:					
An attorney or agent regist in this application.	An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.				
An attorney or agent regist	ered to practice before the Patent and Trademark Office, acting in a representative capacity.				
A sole inventor	A sole inventor				
A joint inventor; I certify the	A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors.				
A joint inventor; all of who	n are signing this e-petition.				
The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71.					
Signature	/Brooke W. Quist/				
Name	Brooke W. Quist				
Registration Number	45030				

Doc Code: PET.PTA.RCAL

Document Description: Request for Recalculation in view of Wyeth

Approved for use through 02/28/2011. OMB 0651-0020

U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH*

Attorney Docket Number: TI-37739.1 Patent Number: 7,666,729

Filing Date (or 371(b) or (f) Date): 07-11-2006 Issue Date: 02/23/2010

First Named

Inventor: Jiong-Ping Lu

Title: METHOD FOR IMPROVING THE THERMAL STABILITY OF SILICIDE

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature / Wade J. Brady III /	Date August 12, 2010
Name (Print/Typed) Wade J. Brady III	Registration Number 32,080
Note: Signatures of all the inventors or assignees of record of the entire interest or their represe	entative(s) are required in accordance with 37

Note: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*.

~	*Total of1	forms are submitted
---	------------	---------------------

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/17/2010

TEXAS INSTRUMENTS INCORPORATED P O BOX 655474, M/S 3999 DALLAS, TX 75265

Applicant : Jiong-Ping Lu : DECISION ON REQUEST FOR Patent Number : 7666729 : RECALCULATION of PATENT Issue Date : 02/23/2010 : TERM ADJUSTMENT IN VIEW

Application No: 11/456,595 : OF WYETH AND NOTICE OF INTENT TO Filed : 07/11/2006 : ISSUE CERTIFICATE OF CORRECTION

SBOE CERTIFICATE OF

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 570 days. The USPTO will suasponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

DALY, CROWLEY, MOFFORD & DURKEE, LLP SUITE 301A 354A TURNPIKE STREET CANTON MA 02021-2714 MAILED
SEP 2.0 2011
OFFICE OF PETITIONS

In re Application of

MAHMOOD, et al

Application No. 11/456,625

Filed: July 11, 2006

Attorney Docket No. MGH-076PUS

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

Inquiries related to this communication should be directed to Diane Goodwyn at (571) 272-6735.

Thurman K. Page Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

RICHARD J. VELTMAN, ESQ.
THE BLACK & DECKER CORPORATION
701 EAST JOPPA ROAD TW 199
TOWSON MD 21286

MAILED

FFB 072011

OFFICE OF PETITIONS

In re Application of

WILLIAMS

Application No. 11/456,733

Filed: July 11, 2006

Attorney Docket No. 5809-03-A

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 31, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of April 16, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). *See* MPEP 711.03(c)(III)(A)(2). Since the amendment submitted does not *prima facie* place the application in condition for allowance (see attached Advisory Action, as previously mailed on September 2, 2008), the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b).

Any request for reconsideration of this decision must be submitted within **TWO** (2) **MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION
Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane C. Goodwyn/ Diane C. Goodwyn Petitions Examiner Office of Petitions

Attachment: Advisory Action

	Application No.	Applicant(s)	
Advisory Action	11/456,733	WILLIAMS, ALSTON	Ŋ E.
Before the Filing of an Appeal Brief	Examiner	Art Unit	
	Lloyd A. Gall	3673	
-The MAILING DATE of this communication appe	ears on the cover sheet with the c	correspondence add	ress
THE REPLY FILED <u>02 September 2008</u> FAILS TO PLACE THI	S APPLICATION IN CONDITION F	OR ALLOWANCE.	
1. The reply was filed after a final rejection, but prior to or on application, applicant must timely file one of the following application in condition for allowance; (2) a Notice of Application (Continued Examination (RCE) in compliance with 37 Continued Examination (RCE) in continued Exam	replies: (1) an amendment, affidavi eal (with appeal fee) in compliance CFR 1.114. The reply must be filed	t, or other evidence, w with 37 CFR 41.31; or	hich places the (3) a Request
a) The period for reply expires 5 months from the mailing date		i. H E I i ti	shaves in lates. In
b) The period for reply expires on: (1) the mailing date of this A no event, however, will the statutory period for reply expire is			
Examiner Note: If box 1 is checked, check either box (a) or (MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).		
Extensions of time may be obtained under 37 CFR 1.136(a). The date have been filed is the date for purposes of determining the period of extender 37 CFR 1.17(a) is calculated from: (1) the expiration date of the set forth in (b) above, if checked. Any reply received by the Office later may reduce any earned patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL	tension and the corresponding amount of shortened statutory period for reply origing than three months after the mailing dated.	of the fee. The appropria nally set in the final Offic e of the final rejection, ev	ate extension fee e action; or (2) as en if timely filed,
 The Notice of Appeal was filed on A brief in comp filing the Notice of Appeal (37 CFR 41.37(a)), or any exter Notice of Appeal has been filed, any reply must be filed w 	nsion thereof (37 CFR 41.37(e)), to	avoid dismissal of the	
AMENDMENTS		71 t. b. a	
3. A The proposed amendment(s) filed after a final rejection, to (a) They raise new issues that would require further core (b) They raise the issue of new matter (see NOTE below) They are not deemed to place the application in beta popular.	nsideration and/or search (see NOTw);	E below);	
(d) They present additional claims without canceling a continuation Sheet. (See 37 CFR 1.1		cted claims.	
4. The amendments are not in compliance with 37 CFR 1.12	21. See attached Notice of Non-Cor	mpliant Amendment (F	PTOL-324).
 Applicant's reply has overcome the following rejection(s): Newly proposed or amended claim(s) would be all 		imely filed amendmen	t canceling the
non-allowable claim(s). 7. For purposes of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected is proved the status of the claim(s) is (or will be) as follows: Claim(s) allowed: 4-10 and 16-26. Claim(s) objected to:		be entered and an ex	planation of
Claim(s) rejected: <u>1-3,11-15 and 31</u> . Claim(s) withdrawn from consideration:			
AFFIDAVIT OR OTHER EVIDENCE	4 h - f 4 h - d - 4 5 6 C N l -	ting of Amenal will mak	he entered
 The affidavit or other evidence filed after a final action, but because applicant failed to provide a showing of good and was not earlier presented. See 37 CFR 1.116(e). 	t before or on the date of filing a No I sufficient reasons why the affidavi	t or other evidence is a	necessary and
 The affidavit or other evidence filed after the date of filing entered because the affidavit or other evidence failed to or 	vercome all rejections under appea	I and/or appellant fails	to provide a
showing a good and sufficient reasons why it is necessary 10. The affidavit or other evidence is entered. An explanation			
REQUEST FOR RECONSIDERATION/OTHER		,	
11. ☐ The request for reconsideration has been considered but	t does NOT place the application in	∞ndition for allowand	e because:
12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).		
	/Lloyd A. Gall/ Primary Examiner, Art Ul September 5, 2008	nit 3673	

Continuation Sheet (PTO-303)

Application No. 11/456,733

Continuation of 3. NOTE: The amendments to claims 1 and 31 require further consideration and/or search.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.usplo.gov

RICHARD J. VELTMAN, ESQ. THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD TW 199 TOWSON MD 21286

MAILED

MAY 162011

In re Application of : OFFICE OF PETITIONS

WILLIAMS

Application No. 11/456,733 : ON PETITION

Filed: July 11, 2006

Attorney Docket No. 5809-03-A

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed March 16, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of April 16, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). A two (2) month extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is September 17, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$810 and the submission required by 37 CFR 1.114; (2) the petition fee of \$1620; and (3) a proper statement of unintentional delay have been received.

This application is being referred to Technology Center AU 3673 for processing of the RCE in the normal course of business.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/456,912	07/12/2006	John Francis McElroy	JD-012-US	6326
	7590 12/23/2010	EXAM	INER	
VANCE INTELLECTUAL PROPERTY, PC 5467 HILL TOP STREET CROZET, VA 22932-3167		WILLIS, DOUGLAS M		
			ART UNIT	PAPER NUMBER
	,		1624	
		·	NOTIFICATION DATE	DELIVERY MODE
		,	12/23/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DAVID@VANCEIP.BIZ



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

DEC 2 3 2010

VANCE INTELLECTUAL PROPERTY, PC 5467 HILL TOP STREET CROZET VA 22932-3167

In re Application of:

McElroy et al.

Serial No.: 11/456,912

Filed: July 12, 2006

Attorney Docket No.: JD-012-US

: PETITION DECISION

This is in response to the petition under 37 CFR § 1.181, filed November 5, 2010, requesting that the finality of the Office action of October 28, 2010 be withdrawn because it was premature.

BACKGROUND

On May 19, 2010, the examiner mailed a non-final (final) Office action setting a three month statutory limit for reply. This action was made non-final due to the granting of a petition. At the time of this Office action, claims 1, 2, 4, 6-8, 11, 12 and 16-28 were pending. The examiner rejected claims 1, 2, 4, 6, 7, 11, 12, 16, 17 and 25-24 and objected to claims 8, 11, 18-24 and 28. The examiner rejected claims 2, 4, 6, 7, 16, 17, 25, 26 and 27 under 35 USC 112, second paragraph, as indefinite. Claims 1 and 12, and newly added claim 25 were rejected under 35 USC 102 (b) as being anticipated by Biberman.

On October 19, 2010, applicants filed amendments to the claims and arguments traversing the examiner's rejections instituted in the non-final Office action of May 19, 2010.

On October 28, 2010, the examiner mailed a final Office action setting a three month statutory limit for reply. In this action, the examiner rejected claims 1, 12, 16, 17, 26 and 27 and objected to claims 2, 4, 6-8, 11, 18-24 and 28. The examiner rejected claims 1 and 12 under 35 USC 112, first paragraph, as failing to comply with the written description requirement. The examiner rejected claims 16, 17, 26 and 27 under 35 USC 112, second paragraph, as indefinite. Claims 1 and 12 were rejected under 35 USC 102 (b) as being anticipated by Imhof et al. The examiner indicated that applicants' amendment necessitated the new grounds of rejection.

On November 5, 2010, applicants submitted the petition under consideration herein.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition, applicants argue "In the First Office Action dated 8 January 2010, the USPTO cited Imhof under § 102 as anticipating pending Claims 1 and 12 (the very same rejection as in the current 28 October 2010 Final Office Action, though based on a different compound in Imhof). Applicants' 31 March 2010 Amendment was intended to limit the claims to the elected Restriction group and did not address Imhof other than to point out that the cited species was outside of Claims 1 and 12 via a proviso in Claim 1.

The Office Action dated 19 May 2010 did not repeat the rejection over Imhof (no mention was made of Imhof in the 19 May rejection), but instead provided a new § 102 rejection of Claims 1 and 12 (and 25) over newly cited Biberman. Thus Claims 1 and 12 were presumed to be free from Imhof as of the 19 May 2010 Office Action.

Applicants 19 October 2010 response to the 19 May 2010 Office Action involved an amendment to exclude Biberman by requiring at least one of X and Y to be other than halogen as well as additional amendments that were intended to overcome §112 rejections. The 19 October 2010 amendment in no way necessitated the USPTO in again rejecting Claims 1 and 12 over Imhof, a rejection it had already removed. The scope of Claims 1 and 12 was not amended in such a way that Imhof, which was removed as reference in the 19 May 2010, suddenly again became a viable reference."

Applicants' argument has been accorded careful consideration and is persuasive. Specifically, applicants' amendments did not necessitate the new rejection. MPEP § 706.07 recites:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art.

Thus, it is *not* proper for an office action to be made final when the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c).

DECISION

The petition is subsequently **GRANTED**.

The Office action mailed October 28, 2010 is hereby vacated to the extent that it was made "final" and the Office action is now considered to be a non-final Office action.

Should there be any questions about this decision please contact Quality Assurance Specialist Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

·Remy Yucel

Director, Technology Center 1600



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/456,912	07/12/2006	John Francis McElroy	JD-012-US	6326
27326 VANCE INTE	7590 06/07/201 LLECTUAL PROPER		ЕХАМ	INER
5467 HILL TO	P STREET	,	WILLIS, DO	DUGLAS M
CROZET, VA	22932-3167		ART UNIT	PAPER NUMBER
			1624	
		•	<u> </u>	
			NOTIFICATION DATE	DELIVERY MODE
			06/07/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DAVID@VANCEIP.BIZ



JUN 0 7 2011

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

VANCE INTELLECTUAL PROPERTY, PC 5467 HILL TOP STREET CROZET VA 22932-3167

In re Application of:

Mcelroy et al.

Serial No.: 11/456,912

Filed: July 12, 2006

Attorney Docket No.: JD-012-US

: PETITION DECISION

This is in response to the "request" that is being treated as a petition under 37 CFR § 1.181, filed May 16, 2011, requesting that the final Office action of February 16, 2011 be withdrawn.

Applicant's arguments have been accorded careful consideration but they are not persuasive for the following reasons. The petition was untimely and therefore the merits of such won't be considered. Applicants should note that 37 CFR 1.181(f) indicates that any petition not filed within two months of the mailing date of the action from which relief is requested may be dismissed as untimely. If the applicant wants consideration after the two months they should file a petition, and corresponding petition fee for such, under 37 CFR 1.183 and ask for a suspension of the Rule 181 and ask that consideration be made later than the 2 months.

Accordingly, the petition filed under 37 CFR 1. 181 is **DISMISSED** as untimely.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Remy Yucel

Director, Technology Center 1600



UNITED STATES DEPARTMENT OF COMMERCE **Patent and Trademark Office**

ASSISTANT SECRETARY OF COMMERCE AND COMMISSIONER OF PATENTS AND TRADEMARKS Washington, DC 20231

Patent No.

:7844557

Inventor(s)

:Acharya et al.

Issued

:11/30/2010

Title

: METHOD AND SYSTEM FOR ORDER INVARIANT CLUSTERING OF

CATEGORICAL DATA

Atty.doc./File No.

Request for Certificates of Correction

Consideration has been given to your request for the issuance of a Certificate of Correction, for the above – identified patent under the provisions of CFR 1.322.

Inspection of the application for the patent reveals col. 1 line 7 is printed in accordance with the record please show evidence of supporting data or amendment. Therefore being no fault on the Patent and Trademark Office, It has no authority to issue a certificate of correction under the provision of 1.322.

In view of the forgoing, your request in this matter, is hereby denied.

Future written correspondence concerning this matter should be filed and directed to Decisions & Certificates of Correction Branch.

Henry Randall **Decisions & Certificates** of Correction Branch (703) 756-1571

THOMAS F. LEBENS- FITCH, EVEN, TABIN & FLANNERY 120 SOUTH LaSALLE STREET, SUITE 1600 CHICAGO, IL 60603-3406

HR



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

WILLIAM J. KOLEGRAFF 3119 TURNBERRY WAY JAMUL, CA 91935

MAILED MAY 16 2011

OFFICE OF PETITIONS

In re Application of

Bar-Giora Goldberg et al

Application No. 11/457,098

Filed: July 12, 2006

Attorney Docket No. AVA-06

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 22, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 10, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is November 11, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$405 and the submission required by 37 CFR 1.114; (2) the petition fee of \$810; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3210.

This application is being referred to Technology Center AU 2612 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Petition Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED SEP 16 2011

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 400 INTERSTATE NORTH PARKWAY SE SUITE 1500 ATLANTA GA 30339

OFFICE OF PETITIONS

In re Patent No. 7,310,096 :

Application No. 11/457,102 :

Filed: July 12, 2006 : ON PETITION

Issued: December 18, 2007 :

Attorney Docket No. 252209-2160 :

This is a decision on the petition filed August 23, 2011, which is being treated as a request under 37 CFR 3.81(b)¹ to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-7751. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (703) 756-1814.

/Joan Olszewski/ Joan Olszewski Petitions Examiner Office of Petitions

¹ See MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

JONES DAY 222 EAST 41ST ST NEW YORK NY 10017

In re Application of Ramanathan Ravichandran et al. Application No. 11/457,144 Filed: July 12, 2006 Attorney Docket No. 12647-002-999 **MAILED**

SEP 2 0 2010

OFFICE OF PETITIONS

: DECISION ON APPLICATION :FOR PATENT TERM ADJUSTMENT

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed July 19, 2010. Applicants request that the patent term adjustment at the time of the mailing of the Notice of Allowance be corrected from fifty-seven (57) days to ninety-four (94) days.

The application for patent term adjustment is **DISMISSED**.

On May 10, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 57 days. The instant application for patent term adjustment was timely filed¹. Applicants dispute the reduction of 37 days of PTA for applicant delay in filing an Information Disclosure Statement (IDS) on April 23, 2010 after the filing of a response to a non-final Office Action on March 17, 2010.

A review of the record reveals that on March 17, 2010 applicants filed a response to the non-final Office action mailed September 17, 2009 with a three month extension of time. Then on April 23, 2010, applicants filed the Information Disclosure Statement (IDS). Pursuant to 37 CFR § 1.704(c)(8), the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution. The record does not support a conclusion that the IDS was expressly requested by the examiner. Accordingly, filing of the IDS may be considered a failure to engage and a proper basis for reduction.

Applicant argues however, that the IDS filed April 23, 2010 included a certification statement, pursuant to 37 C.F.R. § 1.704(d), and should "not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under 37 C.F.R. § 1.704(c)(8)."

PALM records indicate that the Issue Fee was also received on July 19, 2010.

Applicant's argument with respect to the Information Disclosure Statement has been considered, but not found persuasive. The IDS filed April 23, 2010 was filed under circumstances that constitute a failure to engage within the meaning of 37 CFR 1.704(c)(8). Entry of the period of reduction of 37 days is warranted.

37 CFR 1.704 (c) provides that:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

However, 37 CFR 1.704(d) provides that:

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

In this instance, the record supports a conclusion that the IDS was received April 23, 2010 however, the IDS did not include a proper §1.704(d) statement. The statement purported to be in compliance with 37 CFR 1.704(d) does not track the required language of 1.704(d). The required statement states, in pertinent part, that:

Each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement.

Applicants are reminded that § 1.704(d) was revised, effective May 24, 2004. This revision requires that the statement include the language "each item of information contained in the information disclosure statement was <u>first</u> cited ..." for the exception to apply. <u>See</u> 69 FR 21704, Apr. 22, 2004. Moreover, the statement among other things must state that the IDS was first cited in "any" communication, not a communication. As the statement was not proper, entry of the reduction of 37 days was warranted and will not be removed.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance remains 57 days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Anthony Knight

Director

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

PAUL, HASTINGS, JANOFSKY & WALKER LLP 875 15th Street, NW Washington DC 20005

MAILED

OCT 0 8 2010

OFFICE OF PETITIONS

In re Application of

Nancy Kirksey, et al.

Application No. 11/457,218

Filed: July 13, 2006

Attorney Docket No. 36946.00007.UTL1

DECISION ON PETITION TO WITHDRAW

FROM RECORD

This is a decision on the request to withdraw as attorney of record under 37 CFR § 1.36, filed September 17, 2010.

The request is **NOT APPROVED**.

The request cannot be approved because it lacks a forwarding correspondence address of the first named inventor or a properly intervening assignee.

If the forwarding correspondence address is to the assignee, the Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *that properly became of record under 37 CFR 3.71*. 37 CFR 3.71(c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.

The assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, the statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-2991.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

PAUL, HASTINGS, JANOFSKY & WALKER LLP 875 15th Street, NW Washington DC 20005

MAILED

NOV 0 8 2010

OFFICE OF PETITIONS

In re Application of

Nancy Kirksey, et al.

Application No. 11/457,218

Filed: July 13, 2006

Attorney Docket No. 36946.00007.UTL1

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the renewed request to withdraw as attorney of record under 37 CFR § 1.36, filed October 14, 2010.

The request is **NOT APPROVED**.

The request cannot be approved because it lacks a forwarding correspondence address of the first named inventor or a properly intervening assignee.

If the forwarding correspondence address is to the assignee, the Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *that properly became of record under 37 CFR 3.71*. 37 CFR 3.71(c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.

The assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, the statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

There was a revocation power of attorney filed in this application on October 6, 2010 but is no accepted because there is no 3.73(b) statement in the file record.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-2991.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions

cc: SWEET LIFE, INC. 2350 Pullman Drive Santa Ana, CA 92705





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No.

TARO PHARMACEUTICALS U.S.A., INC. C/O VENABLE LLP P.O. BOX 34385 WASHINGTON DC 20043-9998

MAILED

SEP 15 2010

OFFICE OF PETITIONS

In re Patent No. 7718793

Chernyak et al. : DECISION ON REQUEST Issue Date: 05/18/2010 : FOR RECONSIDERATION OF Application No. 11/457280 : PATENT TERM ADJUSTMENT

Filed: 07/13/2006 : and

Attorney Docket No. : NOTICE OF INTENT TO ISSUE 32308-233636 (1017 US2) : CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT," filed on May 25, 2010, which is treated as a petition under 37 CFR 1.705(d). Patentees request that the Patent Term Adjustment for the above-identified patent be increased by thirty-nine (39) days from 385 days to 424 days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of four hundred twenty-four (424) days.

On May 18, 2010, the above-identified application matured into U.S. Patent No. 7,718,793. The instant request for reconsideration filed on May 25, 2010 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 385 days.

Patentee contends that the reduction in patent term adjustment of 57 days for the filing of an amendment after the mailing of the notice of allowance, is incorrect and should be removed. Specifically, patentee asserts that the correct reduction under 37 CFR 1.704(c)(10) is 18 days, beginning on March 23, 2010, the date the amendment after the notice of allowance was mailed, and ending on April 9, 2010, the date the Office mailed a response to the amendment after the notice of allowance.

Patentee's contention is persuasive. A review of the record reveals that on March 23, 2010, an amendment after the mailing of the notice of allowance (37 CFR 1.312) was filed. 9, 2010, 18 days after the amendment after the mailing of the notice of allowance was filed, the Office mailed a letter in response to the amendment. Accordingly, the reduction for applicant delay under 37 CFR 1.704(c)(10) is 18 days. reduction of 57 days is not warranted and will be removed, and a reduction of 18 days will be entered.

In view thereof, the patent term adjustment indicated on the patent should be four hundred twenty-four (424) days (590 days of Office delay and 166 (205 - 57 + 18) days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being referred to the Certificate of Correction Branch for issuance of a certificate of correction to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by FOUR HUNDRED TWENTY-FOUR (424) days.

Patent No. 7,718,793 Application No. 11/457,280 Page 3

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.

Senior Petitions Attorney

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

7,718,793 B2

DATED

May 18, 2010

DRAFT

INVENTOR(S): Chernyak et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [*] Notice: under 35 USC 154(b) by 385 days.

Delete the phrase "by 385 days" and insert - by 424 days--



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

ARENT FOX LLP 555 WEST FIFTH STREET 48TH FLOOR LOS ANGELES CA 90013

MAILED APR 10 2012

OFFICE OF PETITIONS

In re Application of

Jack Debiasio et al

Application No. 11/457,302 : DECISION ON REQUEST FOR REFUND

Filed: July 13, 2006

Attorney Docket No. 030286-09033

This is a decision on the Request For Refund filed, April 3, 2012.

The request is **GRANTED**.

Applicant files the above request for refund and states that "The Applicants submitted a Petition for Revival of Unintentionally Abandoned Application with a Request for Continued Examination on March 29, 2012. The Applicants' representative mistakenly paid the fee for a large entity (\$2790) when the assignee, Scosche Industries, Inc., is a small entity. The Applicants respectfully request that a refund in the amount of \$1390 be made to Deposit Account 01-2300 (referencing Attorney Docket No. 030286.00033)."

In view of the above, the large entity portion of the petition and request for continued examination fees (\$1,395.00) paid on March 29, 2012, will be credited to petitioner's deposit account no. 01-2300 as authorized.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/ Karen Creasy Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

J. GORDON THOMSON P.O. BOX 8865 VICTORIA BC V8V 3Z1 CANADA

MAILED

FEB 092012

OFFICE OF PETITIONS

In re Patent of Elias Assad

Patent No. 7,941,561

Issue Date: May 10, 2011

Application No. 11/457,348

Filing Date: July 13, 2006

Attorney Docket No. AVISAR-01

Decision on Petition

This is a decision on the petition under 37 CFR 1.182 filed January 5, 2012, requesting issuance of duplicate Letters Patent for the above-identified application.

The petition is granted.

The Office of Data Management will be informed of the instant decision and duplicate Letters Patent will be issued in due course.

Telephone inquiries related to the petition should be directed to Petitions Attorney Steven Brantley at (571) 272-3203. Any questions concerning delays in the issuance of the duplicate Letters Patent should be directed to (703) 756-1814.

Charles Steven Brantley Petitions Attorney

Office of Petitions



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 10/07/2010

VEDDER PRICE/FREESCALE 222 N. LASALLE STREET CHICAGO, IL 60601

Applicant : Michael L. Bushman

Patent Number : 7653678

Issue Date : 01/26/2010

Application No: 11/457,380 **Filed** : 07/13/2006

: DECISION ON REQUEST FOR : RECALCULATION of PATENT

: TERM ADJUSTMENT IN VIEW

: OF WYETH AND NOTICE OF INTENT TO

: ISSUE CERTIFICATE OF CORRECTION

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be $\bf 866$ days. The USPTO will $\it suasponte$ issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gcv

SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938
MINNEAPOLIS, MN 55402

MAILED

DEC 03 2010

OFFICE OF PETITIONS

In re Application of

Ken M. Lam

Application No.: 11/457,409

Filed: July 13, 2006

Attorney Docket No.: 2800.221US1

ON PETITION

This is a decision on the petition, filed December 2, 2010, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is not signed by a patent practitioner of record. However, in accordance with 37 CFR 1.34(a), the signature of Kirk A. Gottlieb appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. However, if Mr. Gottlieb desires to receive correspondence regarding this file, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision is being mailed to Mr. Gottlieb; however, until otherwise instructed, any further correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on November 3, 2010, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. \(^1\)

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

¹ The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s)
Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.

The application is being referred to Technology Center AU 2814 for further processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement (IDS).

/SDB/

Sherry D. Brinkley Petitions Examiner Office of Petitions

CC: KIRK A. GOTTLIEB
FISH & RICHARDSON P.C. (SV)
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

HONIGMAN MILLER SCHWARTZ & COHN LLP 38500 WOODWARD AVENUE SUITE 100 BLOOMFIELD HILLS, MI 48304-5048

MAILED
MAY 1 7 2011
OFFICE OF PETITIONS

In re Application of

Robert Workman, et al.

Application No. 11/457,413

Filed: July 13, 2006

Attorney Docket No. 216683-114039

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 8, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 6, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is April 7, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$810, and the submission required by 37 CFR 1.114; (2) the petition fee of \$1620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 3724 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

April M. Wise Pentions Examiner Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

HOVEY WILLIAMS LLP 10801 MASTIN BLVD., SUITE 1000 OVERLAND PARK, KS 66210

MAILED

MAY 252011

OFFICE OF PETITIONS

In re Application of

Raymond J. Taylor

Application No. 11/457,627

Filed: July 14, 2006

Attorney Docket No. 36330

DECISION ON PETITION
TO MAKE SPECIAL UNDER

37 CFR 1.102(c)(1)

This is a decision on the petition under 37 CFR 1.102(c)(1), filed July 14, 2006, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section IV: Applicant's Age must be accompanied by evidence showing that at least one of the applicants is 65 years of age, or more, such as a birth certificate or a statement by applicant. No fee is required

The instant petition includes a copy of inventor Raymond J. Taylor's driver license showing that he is over 65 years of age. Accordingly, the above-identified application has been accorded "special" status.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at 571-272-3210.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application is being forwarded to the Technology Center Art Unit 3624 for action on the merits commensurate with this decision.

Trvin Dingle
Petitions Examiner

Office of Petitions

cc: Thomas B. Luebbering

2405 Grand Boulevard - Suite 400

Kansas City, MO 64108

DATE		Paper No.:
TO ODE OF	: <u>4/20/11</u>	
TO SPE OF	: ART UNIT <u>2831</u>	
SUBJECT: Request for Certificate of Correction for Appl. No.: 1		rection for Appl. No.: <u>11/457.651</u> Patent No. <u>7,850,243</u>
	·	CofC mailroom date 12/15/10
Please resp	ond to this request for a c	ertificate of correction within 7 days.
FOR IFW F	ILES:	
IFW applica	ew the requested changes tion image. No new matte the claims be changed.	/corrections as shown in the COCIN document(s) in the er should be introduced, nor should the scope or
	plete the response (see be nent code COCX .	elow) and forward the completed response to scanning
FOR PAPE	R FILES:	
Please revie	ew the requested changes. Please complete this form	corrections as shown in the attached certificate of (see below) and forward it with the file to:
	lolph Square – 9D10-A Location 7580	
		Ernest C. White, LIE
		Certificates of Correction Branch
·		Certificates of Correction Branch 703-756-1814
Thank You	For Your Assistance	
The reques		
The reques Note your decision	t for issuing the above-i	703-756-1814
The reques Note your decision	t for issuing the above-id	703-756-1814dentified correction(s) is hereby:
The reques Note your decision	t for issuing the above-identification on the appropriate box. Approved	703-756-1814 dentified correction(s) is hereby: All changes apply.
The reques Note your decision	t for issuing the above-id on the appropriate box. Approved Approved in Part Denied	dentified correction(s) is hereby: All changes apply. Specify below which changes do not apply.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS MN 55440-1022

MAILED SEP 23 2011 **OFFICE OF PETITIONS**

In re Application of

Pabalate et al.

Patent Number: 7,971,181

Issue Date: 06/28/2011

Application No. 11/457653

Filing or 371(c) Date: 07/14/2006

Attorney Docket No.

12587-083001

: DECISION ON

: APPLICATION FOR

: PATENT TERM ADJUSTMENT

and

NOTICE OF INTENT TO ISSUE **CERTIFICATE OF CORRECTION**

This is a decision on the petition filed on August 29, 2011, which is being treated as a petition under 37 CFR 1:705(d) requesting that the patent term adjustment indicated on the aboveidentified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand three hundred fifty-seven (1357) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand three hundred fifty-seven (1357) days is GRANTED.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the aboveidentified patent is extended or adjusted by one thousand three hundred fifty-seven (1357) days.

Patent No. 7,971,181

Application No. 11457653

Page 2

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

: 7,971,181 B2

DATED

: January 28, 2011

INVENTOR(S): Pabalate et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [*] Notice: under 35 USC 154(b) by 1490 days.

Delete the phrase "by 1490 days" and insert - by 1357 days--



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313:1450
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Hanley, Flight & Zimmerman, LLC 150 S. Wacker Dr. Suite 2100 Chicago, IL 60606

MAILED

JUN 29 2011

OFFICE OF PETITIONS

In re Application of David J. Croy, et. al.

Application No. 11/457,666

Filed: July 14, 2006

Attorney Docket No. 20004/74-US

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 13, 2011, to revive the above-identified application.

The application became abandoned for failure to timely file a reply to the Notice of Allowance and Fee(s) Due mailed March 4, 2011.

Since the petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of \$1,510 for payment of the issue fee and \$300 for payment of the publication fee; (2) the petition fee of \$1,620; and (3) a proper statement of unintentional delay, the petition is **GRANTED**.

This application file is being referred to the Office of Data Management for further processing into a patent.

Telephone inquiries concerning this decision should be directed to the undersigned at

(571) 272-3226.

Andrea Smith

Petitions Examiner
Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

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OFFICE OF PETITIONS

K&L Gates LLP P.O. Box 1135 CHICAGO IL 60690

In re Patent No. 7,901,282

Cannon

Issue Date: March 8, 2011

Application No. 11/457,707

Filed: July 14, 2006

Atty Docket No. **3718611-03092**

: DECISION ON REQUEST

: FOR

: RECONSIDERATION OF

: PATENT TERM ADJUSTMENT

· and

: NOTICE OF INTENT TO ISSUE

: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on April 18, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred and fifty-three (653) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by six hundred and fifty-three (653) days is **GRANTED**.

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office is in receipt of the \$200. 00 for the fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by six hundred and fifty-three (653) days.

Patent No. 7,901,282 Application No. 11/457,707 Page 2 Telephone inquiries specific to this matter should be directed to the undersigned, at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE CERTIFICATE OF CORRECTION

PATENT

: 7,901,282 B2

DATED

: Mar. 8, 2011

INVENTOR(S): Cannon

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (615) days

Delete the phrase "by 615 days" and insert – by 653 days--



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FEB 022011

PCT LEGAL ADMINISTRATION

ARNOLD & PORTER LLP (24126) ATTN: SV DOCKETING DEPT. 1400 PAGE MILL ROAD PALO ALTO, CA 94304

In re Application of EDWARDS et al

U.S. Application No.: 11/457,708

PCT Application No.: PCT/US2005/002723

Int. Filing Date: 27 January 2005 **DECISION**

Priority Date Claimed: 12 February 2004 Attorney Docket No.: 39780-5202R1 US

GENE DISRUPTIONS, COMPOSITIONS

AND METHODS RELATING THERETO

This is in response to applicant's petitions under 37 CFR 1.181 and 37 CFR 1.78(a)(3) filed on 03 June 2009.

BACKGROUND

On 27 January 2005, applicant filed international application PCT/US2005/002723, which claimed priority of an earlier United States application filed 12 February 2004. A copy of the international application was communicated to the USPTO from the International Bureau on 01 September 2005. The thirty-month period for paying the basic national fee in the United States expired on 12 August 2006.

On 14 July 2006, applicant filed application papers in the USPTO via the EFS-Web electronic filing system ("EFS-Web"). The submission was accompanied by, inter alia, a Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Submission Under 35 U.S.C. 371".

On 31 July 2006, the USPTO mailed a Notice of Incomplete Nonprovisional Application and a Notice Regarding Benefit/Priority Claim(s).

On 24 August 2006, applicant filed a petition under 37 CFR 1.181.

On 16 July 2008, this Office mailed a decision dismissing the 24 August 2006 petition.

On 04 August 2008, applicant filed a renewed petition under 37 CFR 1.181.

On 12 August 2008, this Office mailed a decision dismissing the 04 August 2008 renewed petition.

On 14 October 2008, applicant filed a renewed petition under 37 CFR 1.181.

On 03 December 2008, this Office mailed a decision dismissing the 14 October 2008 renewed petition.

On 30 March 2009, the USPTO mailed a Notice of Abandonment.

On 03 June 2009, applicant filed the instant petitions under 37 CFR 1.181 and 37 CFR 1.78(a)(3).

DISCUSSION

I. Petition Under 37 CFR 1.181

The decision mailed 03 December 2008 set a two month period for response. Because the decision stated that extensions of time were available under 37 CFR 1.136, the Notice of Abandonment was premature. The submitted \$130.00 petition fee will be refunded in due course.

II. Petition Under 37 CFR 1.78(a)(3)

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

A petition for acceptance of a late claim for priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in 37 CFR 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains an acceptable statement of unintentional delay. The statement of unintentional delay differs slightly from the required language and is construed as a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. If this interpretation is incorrect, petitioner is required to immediately notify the Office.

Having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. 120 to the prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that any Filing Receipt includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

CONCLUSION

For the reasons in §I above, the petition under 37 CFR 1.181 is GRANTED.

For the reasons in §II above, the petition under 37 CFR 1.78(a)(3) is GRANTED.

The Notice of Abandonment mailed 30 March 2009 is hereby <u>VACATED</u>.

The application is being referred to the Office of Patent Application Processing.

Bryan Lin
PCT Legal Examiner
PCT Legal Office

Telephone: 571-272-3303 Facsimile: 571-273-0459



COMMISSIONER FOR PATENTS UNITED STATES PATENT AND TRADEMARK OFFICE P.O. Box 1450 ALEXANDRIA, VA 22313-1450

CANON U.S.A. INC. INTELLECTUAL PROPERTY DIVISION 15975 ALTON PARKWAY IRVINE CA 92618-3731

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JUN 23 2011

OFFICE OF PETITIONS

In re Patent No. 7,946,481

Issue Date: 05/24/2011

Application No. 11/457,748

ON PETITION

Filed: 07/14/2006

Attorney Docket No. 10035383US01

This is a decision on the petition under 37 CFR 3.81(b) filed June 7, 2011.

Patentees request correction of the front page of the Letters Patent to include the correct assignee data via Certificate of Correction. With the present request, patentees submitted a completed Certificate of Correction form and paid the requisite fees. Furthermore, it is noted that the assignment was recorded with the USPTO prior to the issuance of the patent.

In view of the above, the request under 37 CFR 3.81(b) to correct the assignee data is GRANTED.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3211. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction as to the assignment information.

Christina Tartera Donnell Senior Petitions Attorney

C. I. Donnell

Office of Petitions



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GENERAL ELECTRIC COMPANY GLOBAL RESEARCH ONE RESEARCH CIRCLE BLDG. K1-3A59 NISKAYUNA NY 12309

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DEC 1 3 2010
OFFICE OF PETITIONS

In re Application of :

Michael John BOWMAN, et al :

Application No. 11/457,840 : DECISION ON PETITION

Filed: July 17, 2006

Attorney Docket No. 201985-1

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 3, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of July 13, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is October 14, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal; (2) the petition fee of \$1620; and (3) a proper statement of unintentional delay.

The Office acknowledges the amendment filed with the petition dated November 3, 2010.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 1797 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

/Diane C. Goodwyn/ Diane C. Goodwyn Petitions Examiner Office of Petitions



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BANNER & WITCOFF, LTD.
ATTORNEYS FOR CLIENT NO. 016689
1100 13th STREET, N.W.
SUITE 1200
WASHINGTON DC 20005-4051

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OFFICE OF PETITIONS

In re Application of

Toshitaka Iwago, et al.

Application No. 11/458,141

Filed: July 18, 2006

Attorney Docket No. 016689.00019

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 6, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely submit corrected formal drawings on or before November 22, 1010, as required by the Notice of Allowance and Fee(s) Due and the Notice of Allowability, mailed August 20, 2010. Accordingly, the date of abandonment of this application is December 7, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) corrected formal drawings, (2) the petition fee of \$1,620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Office of Data Management for processing into a patent.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions

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MERCHANT & GOULD, PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903

MAILED AUG 1 1 2011

OFFICE OF PETITIONS

In re Patent No. 7,939,650 Issue Date: May 10, 2011

Application No. 11/458,181

Filed: July 18, 2006

Attorney Docket No. 11669.0163USD2

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed April 27, 2011, requesting that the terminal disclaimer filed on August 23, 2010, be withdrawn. The \$400 petition fee has been received.

The petition is dismissed.

Petitioner explains that "Although the Terminal Disclaimer filed on August 23, 2010, was reviewed and accepted by the Office, the Terminal Disclaimer was defective as it was signed by an attorney or agent not of record. This error was unintentional. The replacement Terminal Disclaimer filed on February 10, 2011 is properly signed by an attorney or agent of record and complies with 37 C.F.R. § 1.321(c)."

Petitioner's argument has been considered; however, according to Examiner Rodney Swartz of Technology Center Art Unit 1645, the Terminal Disclaimer filed on August 23, 2010, should not be withdrawn. The Examiner has reviewed the record of the present application and its immediate parent application of 09/790,056, and cannot find any evidence that suggests that Eric D. Master was not authorized, at that time, to sign the Terminal Disclaimer filed on August 23, 2010. Therefore, the request cannot be favourably considered.

The terminal disclaimer filed on February 10, 2011, has been accepted and recorded against the above-identified patent application.

Telephone inquiries related to this decision should be addressed to Andrea Smith at (571) 272-3226. Inquiries relating to further prosecution should be directed to Technology Center 1600.

Andrea Smith
Petitions Examiner
Office of Petitions

Petitions Examiner



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP 300 S. WACKER DRIVE 32ND FLOOR CHICAGO IL 60606

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OFFICE OF PETITIONS

In re Application

Siu, et al.

Application No. 11/458,260

Filing or 371(c) Date: July 18, 2006

Dkt. No.: 04-833-A

: PATENT TERM ADJUSTMENT

This is in response to the application for patent term adjustment under 37 CFR 1.705(b), filed November 19, 2010.

Applicant submits that the correct patent term adjustment to be indicated on the patent is 465 days, not 84 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent.

The petition is **GRANTED TO THE EXTENT INDICATED HEREIN**.

37 CFR 1.703(b)

Insofar as the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is <u>DISMISSED</u> as PREMATURE.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See, § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee¹.

Receipt is hereby acknowledged of the required patent term adjustment application fee under 37 CFR 1.705(b) of \$200.00. See, 37 CFR 1.18(e).

However, any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

37 CFR 1.704

Applicants further advise that the patent term adjustment is subject to an additional reduction of five days in connection with the supplemental reply (Information Disclosure Statement) filed April 12, 2010.

A review of the record confirms that as asserted and pursuant to 37 CFR 1.704(c)(8), the patent term adjustment is subject to a reduction of five days, the reduction having commenced April 8, 2010 and ended April 12, 2010.

In view thereof, as of the time of allowance, the application is entitled to an overall patent term adjustment of 79 days (37 CFR 1.702(a) adjustment of 296 days less 37 CFR 1.704 reductions of 217 days).

¹ For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

The application file is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown Petitions Attorney Office of Petitions

Enclosure

Day : Monday Date: 12/6/2010

Time: 17:37:29

PALM INTRANET

PTA Calculations for Application: <u>11/458260</u>				
Application Filing Date: 07/18/2006	PTO Delay (PTO):	296		
Issue Date of Patent:	Three Years:	0		
Pre-Issue Petitions: 0	Applicant Delay (APPL):	212		
Post-Issue Petitions: 0	Total PTA (days):	79		
PTO Delay Adjustment: -5				

File Contents History					
Number	Date	Contents Description	PTO	APPL	START
85	12/06/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		5	
79	08/19/2010	MAIL NOTICE OF ALLOWANCE			
78	08/18/2010	ISSUE REVISION COMPLETED			
77	08/18/2010	DOCUMENT VERIFICATION			
76	08/18/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
75		NOTICE OF ALLOWABILITY			
72		INFORMATION DISCLOSURE STATEMENT CONSIDERED			
71	08/09/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
70	08/09/2010	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
69	08/09/2010	REQUEST FOR CONTINUED EXAMINATION (RCE)			
68	08/10/2010	DISPOSAL FOR A RCE / CPA / R129			
67	08/09/2010	WORKFLOW - REQUEST FOR RCE - BEGIN			
66	07/16/2010	FINISHED INITIAL DATA CAPTURE			
65	05/28/2010	SEQUENCE FORWARDED TO PUBS ON TAPE			
64	05/17/2010	EXPORT TO INITIAL DATA CAPTURE			
63	05/12/2010	MAIL NOTICE OF ALLOWANCE			
62	05/12/2010	ISSUE REVISION COMPLETED			
61	05/12/2010	DOCUMENT VERIFICATION			
60	05/12/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
59	05/12/2010	CASE DOCKETED TO EXAMINER IN GAU			
58	05/10/2010	NOTICE OF ALLOWABILITY			
		INFORMATION DISCLOSURE STATEMENT			

55	04/12/2010	CONSIDERED		1	
54	04/20/2010	DATE FORWARDED TO EXAMINER		<u> </u>	
53	04/07/2010	RESPONSE AFTER NON-FINAL ACTION		90	50
52	,,	REQUEST FOR EXTENSION OF TIME - GRANTED			
51	04/12/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
50	10/07/2009	MAIL NON-FINAL REJECTION			
49	10/06/2009	NON-FINAL REJECTION		ĺ	
48	09/04/2009	DATE FORWARDED TO EXAMINER			
47	08/03/2009	RESPONSE AFTER NON-FINAL ACTION		62	45
46	08/03/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
45	03/02/2009	MAIL NON-FINAL REJECTION			
44	02/27/2009	NON-FINAL REJECTION			
39	12/31/2008	DATE FORWARDED TO EXAMINER			
38	12/09/2008	RESPONSE TO ELECTION / RESTRICTION FILED		60	32
37	12/09/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
36	04/27/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
35	04/27/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	10/18/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
33		INFORMATION DISCLOSURE STATEMENT (IDS) FILED	,		
32	07/10/2008	MAIL RESTRICTION REQUIREMENT	296		-1
31	07/10/2008	PG-PUB ISSUE NOTIFICATION			
30	07/07/2008	REQUIREMENT FOR RESTRICTION / ELECTION			
29		CASE DOCKETED TO EXAMINER IN GAU			
28	04/30/2008	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
27	04/27/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
26		REFERENCE CAPTURE ON IDS			
25	10/18/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		,	
24	04/17/2008	APPLICATION DISPATCHED FROM OIPE			
23	04/03/2008	FILING RECEIPT - UPDATED			
22	04/03/2008	FILING RECEIPT - UPDATED			
21	04/03/2008	SENT TO CLASSIFICATION CONTRACTOR			

•					
20	04/03/2008	LING RECEIPT - UPDATED			
19	04/03/2008	APPLICATION IS NOW COMPLETE			
18	10/03/2006	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
17	07/18/2006	CLAIM PRELIMINARY AMENDMENT			
14	10/03/2006	A SET OF SYMBOLS AND PROCEDURES, PROVIDED TO THE PTO ON A SET OF COMPUTER LISTINGS, THAT DESCRIBE IN			
13		CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
12	10/03/2006	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
11	10/13/2006	ERROR(S) IN CRF CORRECTED BY STIC			
10	08/04/2006	NOTICE MAILEDAPPLICATION INCOMPLETE FILING DATE ASSIGNED			
5	07/25/2006	CLEARED BY L&R (LARS)			
4	07/21/2006	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
3	07/21/2006	CASE CLASSIFIED BY OIPE			
2	07/19/2006	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	07/18/2006	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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MAR 16 2012

OFFICE OF PETITIONS

In re Application of

BYERS

Application No. 11/458,358

Filed: July 18, 2006

Attorney Docket No. 31936-1001-CIP

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 12, 2011.

The request is **DISMISSED**.

The request to withdraw from record cannot be approved because the request to change the correspondence address is not acceptable. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor. 37 CFR 3.71 states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement incompliance with $\S 3.73(b)$ that is signed by a party who is authorized to act on behalf of the assignee.

According to a review of USPTO records, there is no Statement under 37 CFR 3.73(b) in the instant application. In this regard, the Office cannot change the correspondence address as indicated in the Request For Withdrawal filed September 12, 2011, because the assignee has not been properly made of record.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane Goodwyn/ Diane Goodwyn Petitions Examiner Office of Petitions

cc: BLAST-N-CLEAN, LLC 4485 IRVING BLVD. NW ALBUQUERQUE NM 87114



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

JONES DAY 222 E. 41ST. STREET NEW YORK NY 10017

MAILED

In re Patent No. 7,772,199

JUN 09 2011

Issue Date: August 10, 2010

OFFICE OF PETITIONS

Application No. 11/458,365

ON PETITION

Filed: July 18, 2006

Attorney Docket No. 9516-801-999

This is a decision on the petition filed March 23, 2011, which is being treated as a request under 37 CFR 3.81(b)¹ to correct the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **granted**.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3222. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

The file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction filed March 23, 2011.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions

¹ See Official Gazette of June 22, 2004.





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

VON SIMSON & CHIN 62 WILLIAM STREET, 6TH FLOOR NEW YORK NY 10005

MAILED OCT 26 2011

OFFICE OF PETITIONS

In re Application of

Yuichi Kamio

Application No. 11/458450

Filing or 371(c) Date: 07/19/2006

Patent No: 7,358,841

Issued: 04/15/2008

Attorney Docket Number: ADV012 P309

LETTER

This correspondence is regarding the request for acceptance of a fee deficiency submission. The request is treated as a petition under 37 CFR 1.28.

Any further petition must be submitted within ONE (1) MONTH from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Request for Reconsideration of Petition under [insert the applicable code section]". This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Applicant filed a request for acceptance of fee deficiency submission on September 30, 2011. Applicant submitted therewith an authorization to debit the additional amount required to amend this payment to petitioner's Deposit Account. The Office did debited the deposit account the amount of \$490.00. The current amount due, effective September 26, 2011, exceeds the amount debited to petitioner's deposit account.

The applicable Rule, 37 CFR 1.28(c), How errors in small entity status are excused, requires, in relevant part,

- (2) Payment of deficiency owed. The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.
- (i) Calculation of the deficiency owed . The deficiency owed for each previous fee erroneously paid as a small entity is the difference between the current fee amount (for other than a small entity) on the date the deficiency is paid in full and the amount of the previous erroneous (small entity) fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously erroneously paid as a small entity. Where a fee paid in error as a small entity was subject to a fee decrease between the time the fee was paid in

error and the time the deficiency is paid in full, the deficiency owed is equal to the amount (previously) paid in error;

- (ii) Itemization of the deficiency payment . <u>An itemization of the total deficiency payment is required.</u> The itemization must include the following information:
- (A) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;
- (B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;
- (C) The deficiency owed amount (for each fee erroneously paid); and
- (D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.
- (3) Failure to comply with requirements. If the requirements of paragraphs (c)(1) and (c)(2) of this section are not complied with, such failure will either: be treated as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for compliance within a one-month non-extendable time period under § 1.136(a) to avoid the return of the fee deficiency paper, at the option of the Office.

(Emphasis supplied).

A review of the deficiency fee submitted reveals that applicant has failed to properly calculate, itemize and submit the payment of the deficient fee. For example, applicant states that we "would like to request that you debit the additional amount required to amend this payment to our Deposit Account..."

Petitioner has failed to properly calculate and itemize the deficiency payment.

Petitioner attention is also directed to the current fee schedule, effective September 26, 2011, a copy of which is available at http://www.uspto.gov/about/offices/cfo/finance/fees.jsp.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Applicant is further advised that, in patented files: requests for changes of correspondence address, powers of attorney, revocations of powers of attorney, withdrawal of attorney and submissions under 37 CFR 1.501: Designation of, or changes to, a fee address, should be addressed to Mail Stop M Correspondence.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Director for Patents

PO Box 1450

Alexandria, VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

By hand:

Customer Service Window

Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries concerning this petition Decision should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/

Derek L. Woods Attorney Office of Petitions

CC: DENNEMEYER & CO LTD

REGENT HOUSE HEATON LANE

STOCKPORT CHESHIRE ENGLAND SK4 1BB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

VON SIMSON & CHIN 62 WILLIAM STREET, 6TH FLOOR NEW YORK NY 10005

MAILED
DEC 12 2011

OFFICE OF PETITIONS

In re Application of

Yuichi Kamio

Application No. 11/458450

Filing or 371(c) Date: 07/19/2006

Patent No: 7,358,841

Issued: 04/15/2008

Attorney Docket Number: ADV012 P309

LETTER

This is a notice regarding request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS FL 33410

MAILED

AUG 0 2 2010

OFFICE OF PETITIONS

In re Application of

David L. BROCK

Application No. 11/458,480

Filed: July 19, 2006

Attorney Docket No. 2820U.001

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 13, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed William A. Cuchlinski on behalf of all attorneys of record who are associated with customer No. 31917. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There is an outstanding Office action mailed May 12, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-4231.

Michelle R. Eason Paralegal Specialist Office of Petitions

cc: MEDICAL PATENTS 21, INC. 3795 BOYNTON BEACH BLVD. BOYNTON BEACH, FL 33436



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

EDWIN V. MERKEL NIXON PEABODY LLP 1100 Clinton Square Rochester, NY 14604

In re Patent No. 7,662,842 Issue Date: February 16, 2010

Appl. No: 11/458,648 Filed: July 19, 2006

For: Correction of Inventorship

This is a decision on the petition filed December 27, 2010, to correct inventorship under 37 CFR 1.324.

The petition is **GRANTED**.

The patented filed is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

Joseph K. McKane

Joseph K. McKane Supervisory Patent Examiner Art Unit 1626 Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE CERTIFICATE

Patent No. 7,662,842 B2

Patented: February 16, 2010

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above-identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Duane D. Miller; James T. Dalton; Veeresa; Wei Li, all of the United States.

Joseph K. McKane Supervisory Patent Examiner Art Unit 1626 Technology Center 1600



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/31/2010

WILLIAMS, MORGAN & AMERSON 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042

Applicant: Armin Dekorsy: DECISION ON REQUEST FORPatent Number: 7653024: RECALCULATION of PATENTIssue Date: 01/26/2010: TERM ADJUSTMENT IN VIEW

Application No: 11/458,707 : OF WYETH AND NOTICE OF INTENT TO Filed : 07/20/2006 : ISSUE CERTIFICATE OF CORRECTION

1550E CERTIFICATE OF CORRECTION

:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 824 days. The USPTO will suasponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

Doc Code: PET.PTA.RCAL

Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (01-10)

Approved for use through 02/28/2011. OMB 0651-0020

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH*

Attorney Docket Number: Giles 79-52 (RC)-US-NP

Patent Number: 7,668,256

Filing Date (or 371(b) or (f) Date): July 20, 2006

Issue Date: February 23, 2010

First Named Inventor:

ື Randy C. Giles

Title: Method and apparatus for the generation and detection of optical differential varied-multilevel phase-shift keying with pulse amplitude modulation (ODVMPSK/PAM) signals

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature /Gregory J. Murgia/	Date August 10, 2010
Name (Print/Typed) Gregory J. Murgia	Registration Number 41,209

<u>Note</u>: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*.

*Total of forms are submitte

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/18/2010

BROSEMER, KOLEFAS & ASSOCIATES, LLC (ALU)
1 BETHANY ROAD
BUILDING 4 - SUITE # 58
HAZLET, NJ 07730

Applicant: Randy C. Giles: DECISION ON REQUEST FORPatent Number: 7668256: RECALCULATION of PATENT

:

: OF WYETH AND NOTICE OF INTENT TO : ISSUE CERTIFICATE OF CORRECTION

: TERM ADJUSTMENT IN VIEW

ISSUE CERTIFICATE OF CORRECTION

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 859 days. The USPTO will suasponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

FIS/FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE WASHINGTON, DC 20001-4413

MAILED

DEC 162011

OFFICE OF PETITIONS

In re Application of Brown et al.

Application No. 11/458,864

: Decision on Petition

Filing Date: July 20, 2006

Attorney Docket No. 11360.0306-00000

This is a decision on the petition under 37 CFR 1.181 filed December 8, 2011, which requests the Office withdraw the holding of abandonment.

The petition is granted.

The Office issued a Notice of Allowance and Notice of Allowability on December 20, 2011. The Office failed to receive a response and, and as a result, issued a Notice of Abandonment on May 26, 2011.

The instant petition establishes the December 20, 2011 papers were not received because the Office failed to mail the papers to a correct address. Therefore, the holding of abandonment is withdrawn.

Technology Center Art Unit 3627 will be informed of the instant decision and the Technology Center's technical support staff will re-mail the Notice of Allowance and Notice of Allowability. The time period to reply to the new Office action will be set to run from the mailing date of the new Office action.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley Senior Petitions Attorney

Office of Petitions

DATE	:06-03-10	Paper No.:
TO SPE OF	: ART UNIT3753	
10 01 2 01		
SUBJECT	: Request for Certificate of Cort	rection for Appl. No.: <u>11/458903</u> Patent No.: <u>76903</u>
Please respon	d to this request for a certificate	e of correction within 7 days.
FOR IFW FILI	<u>ES</u> :	
		ions as shown in the COCIN document(s) in the IFW applicat nor should the scope or meaning of the claims be changed.
Please comple code COCX.	ete the response (see below) ar	nd forward the completed response to scanning using docume
FOR PAPER I	FILES:	
Certifi Rando	form (see below) and forward it icates of Correction Branch (o olph Square – 9D10-A Location 7580	
Thank You Fe	or Your Assistance	· · · · · · · · · · · · · · · · · · ·
	or issuing the above-identification on the appropriate box.	d correction(s) is hereby:
	Approved	All changes apply.
	Approved in Part	Specify below which changes do not apply.
	X Denied	State the reasons for denial below.
Comments: _	Proposed correction would	cause claims to no longer be in numerical

/Stephen Hepperle/

3753

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

May 9, 2011

Patent No.

:7690396

Inventor
Patent Issued

:Oh et al.

Patent Issued

:April 6, 2010

Title

:MULTIRATE TUBING FLOW RESTRICTOR

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent.

Inspection of the application for the patent reveals that in connection with the alleged error pertaining to the the claims; the printed data in the letters patent with respect to applicants request is considered in accordance with the records within the Patent and Trademark Office. Accordingly, there being no fault on the part of the Patent and Trademark Office, it has no authority to a issue certificate of correction under the provisions of 35 U.S.C. 254 and Rule 322 and 323 of the Rules of Practice of the United States Patent and Trademark Office in Patent Cases.

In view of the foregoing applicants request in this matter is hereby denied. Any telephone inquiry concerning this communication should be directed to Ms. A. Green at (571) 272-9005.

Mary Diggs, Supervisor Decisions & Certificates

of Correction Branch

(703) 756-1580 or (571) 272- 9005

Jason Novak K&L Gates LLP, P.O.Box 1135

Chicago, IL 60690-1135

/arg



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Black, Lowe, Graham 701 5th Ave., Suite 4800 Seattle WA 98104

MAILED

NOV 0 8 2010

OFFICE OF PETITIONS

In re Application of

William E. Luce

Application No. 11/458,909

Filed: July 20, 2006

Attorney Docket No. GORI-1-1004

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the request to withdraw as attorney of record under 37 CFR § 1.36(b), filed October 19, 2010.

The request is **NOT APPROVED**.

The request cannot be approved because the Office no longer accept address changes to a new practitioner/customer number or law firm filed with a request, absent the filing of a power of attorney to the new representative.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *who properly became of record under 37 CFR 3.71*, or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.

The assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, the statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-4584.

/JoAnne Burke/ JoAnne Burke Petitions Examiner Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

KILPATRICK TOWNSEND & STOCKTON LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834

MAILED

JUN 1 4 2011

OFFICE OF PETITIONS

In re Application of

Zeev Shpiro et al

Application No. 11/458,980

Filed: July 20, 2006

Attorney Docket No. 026285-000230US

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 14, 2011, to revive the above-identified application.

The petition is GRANTED.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 31, 2010, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on December 1, 2010.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2626 for further processing.

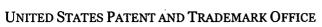
Trvin Dingle
Petitions Examiner
Office of Petitions

cc:

David A. Hall

12730 High Bluff Drive, Suite 400

San Diego, CA 92130





Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.usplo.gov

FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS MN 55440-1022

MAILED

AUG 0 1 2011

OFFICE OF PETITIONS

In re Application of

McGavran et al.

Patent Number: 7,925,978

Issue Date: 04/12/2011

Application No. 11/458982

Filing or 371(c) Date: 07/20/2006 Attorney Docket Number:

07844-724001 / P670

DECISION ON

APPLICATION FOR

PATENT TERM ADJUSTMENT

This is a decision on the petition filed on June 8, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by seven hundred fifty (750) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by by seven hundred fifty (750) days is **DISMISSED**.

Patentees filed, inter alia, a Request for Continued Examination ("RCE"), on November 6, 2009, and October 21, 2010. This Office mailed a Notice of Allowance and Issue Fee Due on December 2, 2010. Patentees request an additional one hundred thirty-two (132) days of patent term adjustment in the period beginning on the date that the Notice of Allowance and Issue Fee Due was mailed, and ending on the date the patent issued, April 12, 2011. Patentees aver that with the mailing of the Notice of Allowance and Issue Fee Due on December 2, 2010, the Office closed examination on the present application on that date, and no continued examination took place in the 132-day period from the mailing date of the Notice of Allowance and Issue Fee Due, to the issuance of the patent. Accordingly, Patentees assert that 132 days of B Delay should have been included in the period of delay accorded the Director, and that the Patent Term Adjustment should be calculated as 750 days, instead of 618 days.

Counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by

continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning

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that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii). 'Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Websters Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the

Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in <u>Blacklight Power</u>, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See <u>BlackLight Power</u>, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a

notice of allowance has previously been issued for the application. See <u>In re Drawbaugh</u>, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures² permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

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All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on July 21, 2009, and ends on November 5, 2009, the day before the RCE, filed November 6, 2009, was filed, and is 108 days. See, 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 618 days, not 750 days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under

² Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions Doc Code: PET.PTA.RCAL

Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (02-10)

Approved for use through 07/31/2010. OMB 0651-0020

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH* Attorney Docket 50139-00007 Filing Date 11/459,269 (or 371(b) or (f) Date): July 21, 2006 Patent Number:

7,656,526

Number: Application

Number:

February 2, 2010

First Named SPULER, Scott Inventor:

Title: "LIDAR SYSTEM FOR REMOTE DETERMINATION OF CALIBRATED, ABSOLUTE AEROSOL BACKSCATTER COEFFICIENTS"

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature P. Dur	Date Avg. 2, 2010				
Name (Print/Typed) Jon P. Deppe	Registration Number 65,196				
Note: Signatures of all the inventors or assignees of record of the entire Interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature, If necessary, submit multiple forms for more than one signature, see below*.					
*Total of forms are submitted.					

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 10 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Instruction Sheet for: REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH*

(Not to be Submitted to the USPTO)

This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A).

This form must be filed within 180 days of the day the patent was granted, with the following exception:

Patentees who received a decision from the USPTO under the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A) may file a request for reconsideration of that decision if such a request for reconsideration is filed within **two months** of the date of the decision (37 CFR 1.181(f)). If the patentee's sole basis for requesting reconsideration of the decision is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A), the request for reconsideration need only state that reconsideration is being requested in view of Wyeth (this form may be used for this purpose if it is filed within **two months** of the date of the decision from the USPTO).

Do not use this form if the application has been allowed, but not yet issued as a patent.

- 1. For patents issued before March 2, 2010: A request for reconsideration under 37 CFR 1.705(d) and the fee set forth in 37 CFR 1.18(e) are not required, provided that the patentee's sole basis for requesting recalculation of the PTA in the patent is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A) and this form is filed within 180 days of the day the patent was granted.
- 2. For patents issued on or after March 2, 2010 (do not use this form): Patentees seeking a revised PTA in a patent issued on or after March 2, 2010, must file a request for reconsideration under 37 CFR 1.705(d) that complies with the requirements of 37 CFR 1.705(b)(1) and (b)(2) within two months of the day the patent issued.

For more information, see "Notice Concerning Calculation of the Patent Term Adjustment With Respect to the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A)" available on the USPTO Web site at http://www.uspto.gov/patents/law/notices/2010.jsp.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
- A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/12/2010

MARSH, FISCHMANN & BREYFOGLE LLP 8055 East Tufts Avenue Suite 450 Denver, CO 80237

Applicant: Scott Spuler: DECISION ON REQUEST FORPatent Number: 7656526: RECALCULATION of PATENTIssue Date: 02/02/2010: TERM ADJUSTMENT IN VIEW

Application No: 11/459,269 : OF WYETH AND NOTICE OF INTENT TO Filed : 07/21/2006 : ISSUE CERTIFICATE OF CORRECTION

:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be $\bf 385$ days. The USPTO will $\it suasponte$ issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

LOWE HAUPTMAN HAM & BERNER, LLP 1700 DIAGONAL ROAD SUITE 300 ALEXANDRIA VA 22314 MAILED

APR 1 1 2011

OFFICE OF PETITIONS

In re Application of

Tang : DECISION ON PETITION

Application No. 11/459,378

Filed: July 24, 2006 Atty. Dkt. No.: 3193D-0019

This is a decision on the petition under 37 CFR 1.181, filed February 14, 2011, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely submit at a proper reply to the Notice of Allowance (Notice) mailed May 6, 2009. The Notice set a three (3) month statutory period of time for reply. Notice of Abandonment was mailed August 31, 2009.

Petitioner alleges non-receipt of the Notice due to the Office's failure to mail it to the correct correspondence address. Petitioner argues that on April 9, 2009, applicant submitted a proper change of correspondence address. Petitioner became aware of the holding of abandonment on January 30, 2011 upon review of the Patent Application Information Retrieval system.

Where an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply) an adequate showing of "unavoidable" delay will require a showing that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (see MPEP § 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address.

The change of correspondence address referenced by petitioner was received by the Office on April 9, 2009, but for unknown reasons was not entered into the record.

In view thereof, the petition to withdraw the holding of abandonment is hereby <u>GRANTED</u>. The holding of abandonment is <u>WITHDRAWN</u> and the Notice of Abandonment is <u>VACATED</u>.

This application is being forwarded to Group Art Unit 3753 for re-mailing of the Notice. The time period for reply will be set in the newly mailed Notice.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown Attorney Advisor Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

	0. 2.1120. 0.1102. 0.11	OZITII IOATZ OF COMIZEOTION				
		Paper No .:20111018				
DATE	: October 18, 2011					
TO SPE C	OF: ART UNIT 2617					
SUBJECT	UBJECT: Request for Certificate of Correction on Patent No.: 7295865					
A response	e is requested with respect to the accom	panying request for a certificate of correction.				
Please complete this form and return with file, within 7 days to: Certificates of Correction Branch - ST (South Tower) 9A22 Palm location 7590 - Tel. No. (703) 305-8309						
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.						
Thank Yo	ou For Your Assistance	Certificates of Correction Branch				
•	est for issuing the above-identified sion on the appropriated box.	d correction(s) is hereby:				
\boxtimes	Approved	All changes apply.				
	Approved in Part	Specify below which changes do not apply.				
	Denied	State the reasons for denial below.				
Commen	ts:					
		NSONG HU/ pervisory Patent Examiner.Art Unit 2617				



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Saul Ewing LLP (Baltimore) Attn: Patent Docket Clerk Centre Square West 1500 Market Street, 38th Floor Philadelphia PA 19102

MAILED OCT 28,2011

In re Application of

OFFICE OF PETITIONS

Fredric David Abramson Application No. 11/459,528 Filed: July 24, 2006

DECISION ON PETITION TO WITHDRAW

Attorney Docket No. 355970.00003

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 18, 2011.

The request is not approved.

The Office will no longer approve requests from practitioners to withdraw from applications where the requesting practitioner is acting, or has acted, in a representative capacity pursuant to 37 CFR 1.34. In these situations, the practitioner is responsible for the correspondence the practitioner files in the application while acting in a representative capacity. As such, there is no need for the practitioner to obtain the Office's permission to withdraw from representation. However, practitioners acting in a representative capacity, like practitioners who have a power of attorney in the application, remain responsible for noncompliance with 37 CFR 1.56, as well as 37 CFR 10.18, with respect to documents they file.

A review of the file record indicates that Gianna Julian-Arnold, and all attorneys/agents associated with customer number 74549 do not have power of attorney, but has acted in a representative capacity in this patent application. See 37 C.F.R. § 10.40. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

The correspondence address has been changed and is copied below.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-4618

/Kimberly Inabinet/

Kimberly Inabinet Petitions Examiner Office of Petitions

cc: Fredric D. Abramson, Ph.D., S.M. 21155 Woodfield Road Gaithersburg, MD 20882



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED NOV 3 0 2011

Fredric D. Abramson, Ph.D., S.M. 21155 Woodfield Road Gaithersburg MD 20882

OFFICE OF PETITIONS

In re Application of

Frederic David Abramson

Application No. 11/459,528

Filed: July 24, 2006

Attorney Docket No. 355970.00003

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 16, 2011.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reasons set forth in the request, "no longer in private practice", does not meet any the conditions set forth in 37 CFR 10.40.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at 571-272-4618.

/Kimberly Inabinet/ Kimberly Inabinet Petitions Examiner Office of Petitions

Konstantina Katcheves 2821 Brian Ct. Ellicott City, MD 21043 cc:

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OFFICE OF PETITIONS

PATTERSON & SHERIDAN, LLP - - APPM/TX 3040 POST OAK BOULEVARD SUITE 1500 HOUSTON TX 77056

In re Application of Ritchie, et al. Application No. 11/459,531 Filed: July 24, 2006 Attorney Docket No. 010421/MDP/COPPER/PJT

ON PETITION

This is a decision on the petition to revive under 37 CFR 1.137(b), filed September 10, 2010.

The petition under 37 CFR 1.137(b) is GRANTED.

The above-identified application became abandoned for failure to timely pay the issue fee in response to the Notice of Allowance mailed June 4, 2010. This Notice set a statutory period for reply of three months. No issue fee having been received, the application became abandoned on September 5, 2010. The Office mailed a Notice of Abandonment on September 15, 2010.

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and submitted the required reply in the form of the issue fee.

The \$1620 petition fee has been charged to Deposit Account No. 50-1074, as authorized.

The application is being forwarded to the Office of Data Management for processing into a patent.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Willy

Cliff Congo Petitions Attorney Office of Petitions



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 WWW.uspto.gov

MICHAEL P. MORRIS BOEHRINGER INGELHEIM USA CORPORATION 900 RIDGEBURY ROAD RIDGEFIELD CT 06877-0368

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JAN 1.0 2012 OFFICE OF PETITIONS

In re Application of

William L. Mengeling et al

Application No. 11/459,542

Filed: July 24, 2006

Attorney Docket No. 10-0040-5-D1

DECISION GRANTING PETITION

: UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, January 9, 2012 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 19, 2011 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

¹ The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

This matter is being referred to Technology Center AU 1648 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/ Irvin Dingle Petitions Examiner Office of Petitions

McAndrews, Held & Malloy, Ltd. 500 West Madison Street cc:

34th Floor

Chicago, IL 60661



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/459,625	07/24/2006	Jeffery B. Gammons	06020-UPA	1693
56758 7590 05/06/2011 KNOX PATENTS		EXAM	INER	
P.O. BOX 30034			KOCH, GEORGE R	
KNOXVILLE, TN 37930-0034			ART UNIT	PAPER NUMBER
			1791	
	,			
	,		MAIL DATE	DELIVERY MODE
			05/06/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JEFFERY B. GAMMONS and CLIFFORD E. GAMMONS

Application 11/459,625 Technology Center 1700

DECISION ON PETITION

This is a decision on the "Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a)" filed August 30, 2010 ("Petition"). The Petition seeks revival because the failure to respond was due to non-receipt of the Notification of Non-Compliant Brief. Petition, p. 3. The Petition will be treated as a petition to the Chief Administrative Patent Judge under 37 C.F.R. §§ 1.181(a) or 41.3 (withdraw holding of abandonment) or, alternatively, under 37 C.F.R. § 1.137(a) (unavoidable delay).

See 75 Fed. Reg. 15,690 (Mar. 30, 2010) for authority of the Chief Administrative Patent Judge.

FINDINGS

- 1. On January 4, 2010, Appellants filed an Appeal Brief.
- 2. On January 21, 2010, a Patent Appeal Specialist entered a Notification of Non-Compliant Appeal Brief. The notification granted Appellants a

period of one month within which to file a corrected brief, i.e., until February 22, 2010 (February 21, 2010 being a Sunday).

- 3. Having received no response to the Notification of Non-Compliant Appeal Brief, the Examiner entered a Notice of Abandonment on August 19, 2010.
- 4. On August 30, 2010, Appellants filed the present Petition accompanied by a declaration and a corrected Appeal Brief (amended sections). The corrected Brief is compliant with applicable rules.
- 5. Appellants' counsel states that he never received the Notification of Non-Compliant Appeal Brief. Petition, p. 3.

RELEVANT AUTHORITY

MPEP § 1207.02 provides that:

The examiner should furnish the appellant with a written statement in answer to the appellant's brief with 2 months after receipt of the brief by the examiner.

- 37 C.F.R. § 1.181(a) provides that:
- a) Petition may be taken to the Director:
- (1) From any action or requirement of any examiner in the ex parte prosecution of an application, or in ex parte or interpartes prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court;
- (2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Director; and
- (3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Board of Patent Appeals and Interferences, see § 41.3 of this title.

- 37 C.F.R. § 41.3 provides that:
- (b) Scope. This section covers petitions on matters pending before the Board (§§ 41.35, 41.64, 41.103, and 41.205); otherwise, see §§ 1.181 to 1.183 of this title.

In respect to revival of an unavoidably abandoned application, 37 C.F.R. § 1.137(a) provides that:

- (a) Unavoidable. If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under § 1.550(d) or § 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:
- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(1);
- (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

In respect to revival of an unintentionally abandoned application, 37 C.F.R. § 1.137(b) provides that:

(b) Unintentional. If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under § 1.550(d) or § 1.957(b) or limited under § 1.957(c),

or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

In *Barbacid v. Brown*, 223 Fed.Appx. 972, 973 (Fed. Cir. 2007), the Federal Circuit held: "[T]he duty to monitor the status of the case falls on [the party to the case]. See, e.g., *Witty v. Dukakis*, 3 F.3d 517, 521 (1st Cir. 1993) (. . . 'parties to an ongoing case have an independent obligation to monitor all developments in the case')."

DISCUSSION

The application became abandoned on February 23, 2010, as a result of Appellants' failure to timely respond to the Notification of Non-Compliant Appeal Brief.

The first requirement for obtaining withdrawal of the holding of abandonment under 37 C.F.R. §§ 1.181(a) and/or 41.3, is that Appellants must present evidence that the Notification of Non-Compliant Appeal Brief was not received. See, e.g., MPEP § 711.03(c)(I)(A) (applicable evidence described).

In support of the Petition, Appellants include a "Declaration of Thomas A. Kulaga under 37 C.F.R. §1.137" (Declaration), the attorney of record. In the Declaration, Mr. Kulaga (declarant) describes "[his] normal procedure for receiving and processing incoming mail, such as from the Patent and Trademark Office." Declaration, 1. Declarant describes a series of steps performed by the declarant and his secretary, including logging in the incoming correspondence procedure into a case management software application and updating the docketing calendar. Declaration, 2. Declarant also states that "the Notification requires special docketing because it is not the type of communication that is normally received in my office." *Id.*

While the Declaration includes a number of statements by the declarant that his records fail to show receipt of the Notification of Non-Compliant Appeal Brief, the showing is insufficient according to the guidelines set forth in MPEP § 711.03(c)(I)(A).

Specifically, the showing is insufficient to "establish that the docketing system is sufficiently reliable." *Id.* The declarant states that he searched a number of records. Declaration, 2. However, declarant did not provide required copies of the records used by the practitioner where the non-received Office action would have been entered had it been received. Additionally, declarant indicates that his secretary processes the correspondence. *Id.* However, declarant has not provided a statement from the secretary attesting to her duties. Finally, declarant states that "the Notification requires special docketing because it is not the type of communication that is normally received in my office." *Id.* Declarant has provided no statement indicating what the "special docketing" procedures are and how they differ from declarant's "normal procedure for receiving and processing incoming mail." Declaration, 1.

Lacking an appropriate evidentiary showing, withdrawal of the holding of abandonment is inapplicable.

Further, revival under 37 C.F.R. § 1.181(a) and/or § 41.3 is inappropriate because Appellants have not alleged that any action or requirement of the Office was incorrect or inappropriate.

Also relevant to the request for withdrawing the holding of abandonment is the reasonableness of the delay in seeking such withdrawal from the date of abandonment. Patent applicants have a duty to periodically check the file of a pending application (PAIR) to determine if a document that is expected from the Office has been entered in the file, *i.e.*, an examiner's answer. *See Barbacid* at 973. Here a delay of almost eight months in checking the file of an application to determine if an examiner's answer has been filed is considered to be an unreasonably long delay. As noted above, examiners are expected to prepare and mail examiner's answers within two months after receiving an appeal brief.

Unlike the situation in *Barbacid*, however, Appellants' response to the Notification of Non-Compliant Appeal Brief is not a prerequisite to the Office retaining jurisdiction over this matter. Therefore, under appropriate circumstances, even though the application is abandoned, it can be revived under 37 C.F.R. § 1.137(a) or § 1.137(b).

Revival under 37 C.F.R. § 137(a), requires, *inter alia*, an evidentiary showing that the delay was unavoidable. *See* MPEP § 711.03(c)(II)(C). "A showing of unavoidable delay will [] require: (1) evidence concerning the procedures in place that should have avoided the error resulting in the delay; (2) evidence concerning the training and experience of the persons responsible for the error; and (3) copies of any applicable docketing records to show that the error was in fact the cause of the delay. See MPEP

§ 711.03(c), subsection II.C.2." Again, the evidence submitted is insufficient to establish that the delay in responding to the Notification of Non-Compliant Appeal Brief was unavoidable for reasons given above.

DECISION

In view of the foregoing, the Petition is DENIED. Appellants are granted a period of one month in which to file a renewed petition under 37 C.F.R. § 1.137(a), seeking revival of an unavoidably abandoned application, including appropriate evidence establishing unavoidability, or under 37 C.F.R. § 1.137(b) seeking revival of an unintentionally abandoned application. Should Appellants decide to file a renewed petition, they are advised to be careful to include all elements required by the applicable rule, i.e., 37 C.F.R. § 1.137(a) or § 1.137(b).

Merrell C. Cashion, Jr.

Case Management Administrator



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/459,625	07/24/2006	Jeffery B. Gammons	06020-UPA	1693
56758 KNOX PATEN	7590 06/21/2011 ITS	EXAM	INER	
P.O. BOX 3003	34		KOCH, GEORGE R	
KNOXVILLE,	TN 37930-0034		ART UNIT	PAPER NUMBER
			1745	
		•		
			MAIL DATE	DELIVERY MODE
			06/21/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JEFFERY B. GAMMONS and CLIFFORD E. GAMMONS

Application 11/459,625 Technology Center 1700

DECISION ON PETITION

This is a decision on the renewed "Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a)" filed June 5, 2011 ("Petition"). The Petition seeks revival because the failure to respond was due to non-receipt of the Notification of Non-Compliant Brief. Petition 3.

See 75 Fed. Reg. 15,689 (Mar. 30, 2010) for authority of the Chief Administrative Patent Judge.

FINDINGS

- 1. On January 4, 2010, Appellants filed an Appeal Brief.
- 2. On January 21, 2010, a Patent Appeal Specialist entered a Notification of Non-Compliant Appeal Brief. The notification granted Appellants a period of one month within which to file a corrected brief, i.e., until February 22, 2010 (February 21, 2010 being a Sunday).

- 3. Having received no response to the Notification of Non-Compliant Appeal Brief, the Examiner entered a Notice of Abandonment on August 19, 2010.
- 4. On August 30, 2010, Appellants filed the a "Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a)" accompanied by a declaration and a corrected Appeal Brief (amended sections). The corrected Appeal Brief of August 30, 2010 is compliant with applicable rules.
- 5. On May 6, 2011, the Board of Patent Appeals and Interferences issued a Decision denying the Petition of August 30, 2010. The Decision treated the Petition of August 30, 2010 as a petition to withdraw the abandonment under 37 CFR § 1.181(a) and, alternatively, under 37 CFR § 1.137(a) as unavoidably abandoned. The Petition was denied because Appellants did not provide sufficient evidence to withdraw the abandonment or to establish that the delay in responding to the Notification of Non-Compliant Appeal Brief was unavoidable. Decision 5, 6.
- 6. On June 5, 2011, Appellant concurrently filed a renewed "Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a)" and, for alternative consideration, a "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)."

RELEVANT AUTHORITY

In respect to revival of an unavoidably abandoned application, 37 C.F.R. § 1.137(a) provides that:

- (a) Unavoidable. If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under § 1.550(d) or § 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:
- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(1);
- (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

DISCUSSION

The application became abandoned on February 23, 2010, as a result of Appellants' failure to respond timely to the Notification of Non-Compliant Appeal Brief.

The requisite fee and reply (compliant Appeal Brief) were previously submitted on August 30, 2010. A terminal disclaimer is not required because the application was filed on July 24, 2006, which is after the critical date of June 8, 1995 set forth in in 37 C.F.R. § 1.137(d).

Revival under 37 C.F.R. § 137(a), requires, *inter alia*, an evidentiary showing that the delay was unavoidable. *See* MPEP § 711.03(c)(II)(C).2.

Appellants' Petition under 37 C.F.R. § 1.137(a) of June 5, 2011 and accompanying showing is to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable. Accordingly, the Petition to revive the application under 37 C.F.R. § 1.137(a) is **granted**. The Appeal Brief filed August 30 2010 will be entered into the record.

In view of the grant of the Petition under 37 C.F.R. § 1.137(a) of June 5, 2011, the "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed concurrently is **dismissed** as moot.

DECISION

In view of the foregoing, the "Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a)" filed June 5, 2011 is GRANTED.

The "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed June 5, 2011 is DISMISSED as moot.

The Appeal Brief filed August 30 2010 will be entered into the record. The application will be returned to the Examiner for preparation of an Examiner's Answer or other action as appropriate.

Merrell C. Cashion, Jr.

Case Management Administrator





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FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS MN 55440-1022

MAILED

MAY 23 2011

OFFICE OF PETITIONS

In re Patent of LaSalle et al.

Patent No. 7,895,068

Issued: February 22, 2011

Application No. 11/459,751 Filed: July 25, 2006

Atty Docket No. 12587-0208002

: ON APPLICATION FOR

: PATENT TERM

: ADJUSTMENT AND NOTICE

: OF INTENT TO ISSUE

: CERTIFICATE OF CORRECTION

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(d)," filed April 21, 2011. Patentees request that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two hundred fifty-five (255) days.

The petition is GRANTED to the extent indicated herein.

Patentees argue that the Director erred in the calculation of patent term adjustment by subtracting from the period of B Delay a period of time that was not "consumed by continued examination of the application." The first Request for Continued Examination (RCE) was filed on July 14, 2010. On January 5, 2011, the Office mailed a Notice of Allowance. Patentees argue no continued examination took place during the 48 day period from January 5, 2011 (the mailing date of the Notice of Allowance) until February 22, 2011 (the date the patent issued). Thus, patentees argue 48 days should have been added to the 4 days accorded by the Director for the B Delay period (beginning July 10, 2010 and ending on July 13, 2010, the day before the first RCE was filed).

Patentees' argument has been considered, but has not been found to be persuasive. Per 35 U.S.C. § 154(b)(1)(B)(i), B Delay does

not include "any time consumed by continued examination of the application requested by the applicant under section 132(b)."

Per the language of 37 CFR 1.703(b)(1):

- (b) The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods:
 - (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued;

As stated above, the number of days beginning on the date a RCE was filed and ending on the issuance date of the patent are not included in the B Delay period. The maximum B Delay in this case is 4 days, which is the number of days beginning on July 10, 2010, the day after the date three years after application's the filing date, and ending on July 13, 2010, the day before the date the first RCE was filed. The filing of the first RCE cuts off accumulation of any additional period of adjustment for the over three year calculation. All days from the date the first RCE was filed to the date of issuance are not included, per 37 CFR 1.703(b)(1).

Patentees disclose that they believe that the Office failed to enter a reduction in connection with the filing of a supplemental reply or paper in the form of an Information Disclosure Statement (IDS), filed July 6, 2010. Patentees state that after applicants filed a reply on January 19, 2010, that applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) on July 6, 2010. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS, filed July 6, 2010, reveals that applicants did not include a statement under 37 CFR 1.704(d). Thus, applicants

¹ Pursuant to 37 CFR § 1.704(d):

A paper containing only an information disclosure statement in compliance with \$\$ 1.97 and 1.98 will not be considered a failure

failed to engage in reasonable efforts to conclude prosecution of the application. The period of adjustment should have been reduced by 168 days pursuant to 37 CFR 1.704(c)(8), counting the number of days beginning on the day after the date the initial reply was filed, January 20, 2010, and ending on the date that the IDS was filed, July 6, 2010. Accordingly, a period of reduction of 168 days will be entered.

In view thereof, the correct patent term adjustment is 171 days, which is the sum of 239 days of delay under 35 U.S.C. \$ 154(b)(1)(A) ("A Delay") and 177 days of B Delay, reduced by 245 (61 + 16 + 168) days of Applicant delay.

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one** hundred seventy-one (171) days.

to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley Senior Petitions Attorney

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT

: 7,895,068 B2

DATED

February 22, 2011

DRAFT

INVENTOR(S): LaSalle et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 339 days

Delete the phrase "by 339 days" and insert – by 171 days--

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS MN 55440-1022

MAILED AUG 2 5 2011 OFFICE OF PETITIONS

In re Patent of LaSalle et al. : FINAL AGENCY DECISION

Patent No. 7,895,068 : ON

Issue Date: February 22, 2011 : REQUEST FOR RECONSIDERATION

Application No. 11/459,751 : OF

Filed: July 25, 2006 : DECISION ON APPLICATION

Attorney docket: 12587-0208002 : FOR

For: TRANSITIVE TRUST NETWORK : PATENT TERM ADJUSTMENT

This is a decision on the "RESPONSE TO DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION" filed June 22, 2011, requesting reconsideration of the decision of May 23, 2011, and requesting that the patent term adjustment determination under 35 U.S.C. § 154(b) in the decision of May 23, 2011, be changed from 171 days to 255 days.

Patentees request that the decision on this renewed request for reconsideration of patent term adjustment be deferred or delayed until a final decision has been rendered in Abbott
Biotherapeutics Corp. v. Kappos. There is no specific regulatory provision for requesting that a petition under 37 CFR 1.705(d) be held in abeyance.

The request for reconsideration of the decision of May 23, 2011, is granted to the extent that the decision of May 23, 2011, has been reconsidered; however, the request for reconsideration is **DENIED** with respect to making any change in the patent adjustment determination under 35 U.S.C. § 154(b) of 171 days indicated in the decision of May 23, 2011. This decision may be viewed as a final agency action within the meaning of 5 U.S.C. § 704 and for purposes of seeking judicial review. See MPEP 1002.02.

BACKGROUND

On February 22, 2011, the above-identified application matured into U.S. Patent No. 7,895,068, with a revised patent term adjustment of 339 days. On April 21, 2011, Patentees timely submitted a petition for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 255 days. On May 23, 2011, the Office mailed a decision indicating the patent term adjustment is 171 days and affording Patentees with a 30 day/1 month period to contest the decision. Patentees timely filed the present petition on June 22, 2011. Patentees maintain that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentees contend that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentees argue that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on December 1, 2010, thereby closing examination of the application on that date. Thus, Patentees argue no continued examination took place during the 84 day period from December 1, 2010 (the mailing date of the Notice of Allowance) until February 22, 2011 (the date the patent was issued). As such, Patentees maintain that the "B delay" should include the 84 days and be increased from 177 to 261 days. Patentees conclude that the correct patent term adjustment is 255 days (the sum of 239 days of "A delay" and 261 days of "B delay" minus 245 days of Applicant delay).

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154 (b) (1) (B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including -

- any time consumed by continued examination of the (i) application requested by the applicant under section 132(b);
- (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the

Board of Patent Appeals and Interferences or by a Federal court;

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

- (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
- (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
- (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
- (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
- (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentees' arguments have been considered, but not found The Office calculated the period of "B delay" persuasive. pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 177 days based on the application having been filed under 35 U.S.C. 111(a) on July 25, 2006 and the patent not having issued as of the day after the three year date, July 26, 2009, and a request for continued examination being filed on January 19, In other words, the 84-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent

within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)¹. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued

[·] ¹ Pursuant to 35 U.S.C. 132(b) , 37 CFR 1.114 provides for continued examination of an application, as follows:

⁽a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in $\S 1.17(e)$ prior to the earliest of:

⁽¹⁾ Payment of the issue fee, unless a petition under \S 1.313 is granted;

⁽²⁾ Abandonment of the application; or

⁽³⁾ The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

⁽b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentees' argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term.

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of

the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F.Supp.2d 138 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, inter alia, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)². Clause (i) specifies "any time consumed by

 $^{^2}$ Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no

continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Collegiate Dictionary, (11 th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b) (the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days 'used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in <u>Blacklight Power</u>, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See <u>BlackLight Power</u>, <u>Inc. v. Rogan</u>, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously

been issued for the application. See <u>In re Drawbaugh</u>, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures³ permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to

Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on January 19, 2010, and the patent issued by virtue of that request on February 22, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on December 1, 2010 and ending on February 22, 2011 is not included in calculating Office delay.

CONCLUSION

Accordingly, the decision on application for patent term adjustment has been reconsidered and the request for additional patent term is **DENIED**.

The patent term adjustment remains 171 days, as indicated in the decision of May 23, 2011. It is noted a certificate of correction listing a patent term adjustment of 171 days was issued June 28, 2011.

Deposit account no. 06-1050 will be refunded the \$200.00 petition fee submitted with the instant petition, as Patentees have previously paid the \$200.00 petition fee on April 21, 2011.

Telephone inquiries specific to this matter should be directed to Shirene Willis Brantley, Senior Petitions Attorney, at (571) 272-3230.

Anthony Knight

Director, Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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OFFICE OF PETITIONS

In re Patent No.7,757,956

Koenck, et al.

Issue Date: July 20, 2010

Application No. 11/459,884 Filed: July 25, 2006

Attorney Docket No. 14410US04

DECISION FOR REQUEST

FOR RECONSIDERATION

OF PATENT TERM

ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(d) filed September 15, 2010. Patentees request that the patent term adjustment indicated on the face of the Letters of Patent be corrected from one hundred and thirty-four (134) days to one hundred and thirty-five (135) days.

The request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

Patentee's are given TWO (2) MONTHS from the mail date of this decision to respond. No extension of time will be granted under 37 CFR 1.136.

On July 20, 2010, the above-identified application matured into U.S. Patent No. 7,757,956, with a revised patent term of 134 days. The instant request for reconsideration filed September 15, 2010and, was timely filed within two months of the issuance of the patent. Patentee asserts that the adjustment under 37 CFR 1.702(b) and 37 CFR 1.703(b), is 227 days and that the patent term adjustment is 135 days.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on July 26, 2009, and ends on March 8, 2010, the day before the RCE was filed, and is 226 (not 227) days.

In view thereof, the patent term adjustment of 134 days indicated in the patent is correct.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Further correspondence with respect to this decision should be addressed as follows:

By Mail:

Mail Stop Petition

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

By FAX:

(571) 273-8300

ATTN: Office of Petitions

By Hand:

Customer Service Window

Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions

	SPE RESPONS	E FOR CERTIFICATE OF CORRE	CTION
	.,1 1		Paper No.:
DATE	: 4/29/3	ABSOUAD, PATRICK C	· w)
TO SPE OF			
SUBJECT	: Request for Certificate of C	orrection for Appl. No.: 11 4599	12 Patent No.: 7622929
Please resp	ond to this request for a	certificate of correction within	n 7 days.
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		/Patrick Assouad/	2858
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PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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DATE	: 04/07/11	Paper No.:
TO SPE OF	•	tn: ASHLEY BOYER D (SPE)
SUBJECT	: Request for Certificate o	of Correction for Appl. No.: 11/460104_Patent No.: 7882773
		C of C Mailroom date: 03/30/11
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	SPE RESPON	NSE FOR CERTIFICATE OF CORRECTION
DATE	: 04/07/11	Paper No.:
		And A CLILLEY DOYED D (CDE)
TO SPE OF	: ART UNIT: 3/24 AT	tn: ASHLEY BOYER D (SPE)
SUBJECT	: Request for Certificate o	of Correction for Appl. No.: 11/460104_Patent No.: 7882773
		C of C Mailroom date: 03/30/11
Please resp	ond to this request for	a certificate of correction within 7 days.
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7	Approved	All changes apply.
Ó	Approved in Part	Specify below which changes do not apply.
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MOTOROLA MOBILITY, INC. **600 NORTH US HIGHWAY 45** W2-55BB LIBERTYVILLE, IL 60048-5343

MAILED NOV 08 2011 OFFICE OF PETITIONS

In re Application of

Jay STRATER

Application No. 11/460,140

Filed July 26, 2006

Attorney Docket No. BCS04010

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October, 24, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed March 3, 2011, which set a shortened statutory period for reply of three (3) months. A three (3) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on September 4, 2011.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment, a Request for Continued Examination, and the \$930 filing fee; (2) the petition fee of \$1860; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office Action of March 3, 2011 is accepted as having been unintentionally delayed.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being

mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries concerning this decision should be directed to Joanne Hama at (571) 272-2911 or in her absence, the undersigned at (571) 272-7099.

The application file is being referred to Technology Center AU 2475 for appropriate action on the concurrently filed amendment.

Petitions Examiner
Office of Petitions

cc: Susan R. Payne 6450 Sequence Drive San Diego, CA 92121

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

DUFT BORNSEN & FISHMAN, LLP 1526 SPRUCE STREET SUITE 302 BOULDER CO 80302

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JUL 08 2011

OFFICE OF PETITIONS

In re Application of Shea M. Writer

Application No. 11/460,167

Filed: July 26, 2006

Attorney Docket No. 71008-003

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 8, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an RCE and an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action mailed June 8, 2010, is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 3621 for appropriate action by the Examiner in the normal course of business.

/KOC/ Karen Creasy Petitions Examiner Office of Petitions

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HAYNES AND BOONE, LLP
IP SECTION
2323 VICTORY AVENUE, SUITE 700
DALLAS, TX 75219

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SEP 29 2010

OFFICE OF PETITIONS

In re Application of

Eric HAMILTON, et al. Application No. 11/460,204 Filed: July 26, 2006

Attorney Docket No. 41403.41

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 11, 2010.

The request is **NOT APPROVED**.

The request to withdraw as attorney/agent of record and change of correspondence address is hereby not accepted. Petitioner has not complied with current USPTO requirements, set forth in 37 CFR 10.40 concerning Request for Withdrawal as Attorney and Change of Correspondence Address.

Petitioner has not properly submitted forwarding correspondence address information for the application. In this regard, the request directs all future correspondence be forwarded to an assignee. However, the request did not include a statement under 37 CFR 3.73b. Petitioner asserts that on February 22, 2008, a 3.73(b) statement was previously filed. *Unfortunately, a new statement must be submitted concurrently with the request to withdraw as attorney of record.*

In view of the above, the request can not be granted at this time. All future communications from the Office will be directed to the above-listed address until otherwise properly notified by the applicant or a proper change of correspondence address has been submitted.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-7253.

All other inquires concerning either the examination or status of the application should be directed to the Technology Center at 571-272-2600.

/Monica A. Graves/ Petitions Examiner, Office of Petitions

> ZVUE CORPORATION 41 DECATUR STREET SAN FRANCISO, CA 94103

CC:

ATTACHMENT: Statement Under 37 CFR 3.73(b)





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Fish & Richardson P.C. (SV) P.O.Box 1022 Minneapolis MN 55440-1022

MAILED APR 0 4 2012 OFFICE OF PETITIONS

In re Patent No. 8,099,260

KFOURI et al. : DECISION ON REQUEST FOR

Issue Date: January 17, 2012 : RECONSIDERATION OF Application No. 11/460,524 : PATENT TERM ADJUSTMENT

Filed: July 27, 2006 :

Attorney Docket No. 15786- :

0087001 :

Title: ANALYSIS ERROR DETECTION :

FOR A CAD MODEL :

This is a decision on the petition filed on March 16, 2012, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred fifty-one (1,151) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED**.

BACKGROUND

On January 17, 2012, the above-identified application matured into U.S. Patent No. 8,099,260 with a revised patent term adjustment of 1,069 days. On March 16, 2012, patentee timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 1,151. Patentee maintains that the Office incorrectly calculated Office delay

pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on October 28, 2011, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 82-day period from October 28, 2011 (the mailing date of the Notice of Allowance) until January 17, 2012 (the date the patent was issued). such, Patentee maintains that the "B delay" should include the 82 days and be increased from 552 to 634 days. Patentee concludes that the correct patent term adjustment is 1,151 days (the sum of 916 days of "A delay" and 634 days of "B delay" minus 247 days of overlap between "A delay" and "B delay" - 152 days of applicant delay).

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —

- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
- (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
- (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

- (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
- (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
- (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
- (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
- (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 552 days based on the application having been filed under 35 U.S.C. 111(a) on July 27, 2006, and the patent not having issued as of the day after the three year date, July 28, 2009, and a request for continued examination under 35 U.S.C. 132(b) having been filed on January 31, 2011. In other words, the 82-day period beginning on the date of mailing of the Notice of Allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C.

132(b)¹. Thus, with respect to calculating the "B delay", where applicant has filed a request for continued examination the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the

Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

⁽a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in $\S 1.17(e)$ prior to the earliest of:

⁽¹⁾ Payment of the issue fee, unless a petition under \S 1.313 is granted;

⁽²⁾ Abandonment of the application; or

⁽³⁾ The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

⁽b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a Notice of Allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of

the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138 (D.D.C. 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, inter alia, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses $(i)-(ii)^2$. Clause (i) specifies "any time consumed by

² Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year

continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Websters Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b) (the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution

period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a See 35 U.S.C. 151 ("[i]f it appears that notice of allowance. applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in <u>Blacklight Power</u>, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. <u>See BlackLight Power</u>, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. <u>See In re Drawbaugh</u>, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures³ permits the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the Notice of Allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the Notice of Allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the Notice of Allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on January 31, 2011, and the patent issued by virtue of that request on January 17, 2012. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on January 31, 2011, and ending on January 17, 2012, is not included in calculating Office delay.

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 1,069 days indicated on the patent is correct.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

/Christina Tartera Donnell/

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions

		OR CERTIFICATE OF CORRECTION Paper No.:	
DATE	:03-25-11		
TO SPE OF	: ART UNIT1648		
SUBJECT	: Request for Certificate of Correction for Appl. No.: 11/460584 Patent No.: 7871626		
Please respo	ond to this request for a ce	CofC mailroom date: 02-25-11 ertificate of correction within 7 days.	
FOR IFW FI	<u>LES</u> :		
the IFW app		corrections as shown in the COCIN document(s) in atter should be introduced, nor should the scope or	
•	plete the response (see be nent code COCX .	low) and forward the completed response to scanning	
FOR PAPER	R FILES:		
	,	corrections as shown in the attached certificate of (see below) and forward it with the file to:	
Rand	icates of Correction Brar olph Square – 9D10-A Location 7580	Angela Green Certificates of Correction Branch (703) 756-1541	
	•		
Thank You	For Your Assistance		
The reques	· -	lentified correction(s) is hereby:	
The reques	t for issuing the above-id	lentified correction(s) is hereby: All changes apply.	
The reques	t for issuing the above-id		
The reques Note your decision	t for issuing the above-id on the appropriate box. Approved	All changes apply.	

/Zachariah Lucas/



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ROBERT A. PARSONS 4000 N. CENTRAL AVENUE, SUITE 1220 PHOENIX AZ 85012

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FEB 1 6 2012 OFFICE OF PETITIONS

In re Application of Thomson et al.

Application No. 11/460,624

Filed: July 27, 2006

Attorney Docket No. 5002-A5

For: VOICE ACTIVATED COMMUNICATION USING

AUTOMATICALLY UPDATED ADDRESS

BOOKS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed January 25, 2012, to revive the above-identified application.

This application became abandoned for failure to timely respond to the final Office action, mailed June 22, 2010, which set an extendable three month period for reply. Accordingly, this application became abandoned on September 23, 2010. A Notice of Abandonment was mailed on January 25, 2011.

Applicants have submitted a RCE and required \$465.00 fee and amendment in reply to the June 22, 2010 final Office action, an acceptable statement of the unintentional nature of the delay in responding to the June 22, 2010 final Office action, and the \$930.00 petition fee.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, practitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, practitioner must notify the Office.

The petition is **GRANTED**.

After the mailing of this decision the application will be forwarded to Technology Center AU 2614 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Telephone inquiries pertaining to this decision may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents
United States Patent and Trademark Office
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ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE NC 28280-4000

MAILED

AUG 0 4 2010

OFFICE OF PETITIONS

In re Application of

William E. Hood IV

Application No. 11/460,832 Filed: July 28, 2006

Attorney Docket No. 43314/311766

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed July 7, 2010.

The request is **NOT APPROVED**.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71, or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with $\S 3.73(b)$ that is signed by a party who is authorized to act on behalf of the assignee.

Therefore, as there is currently no Statement under 37 CFR 3.73(b) of record in the instant application, the Office cannot change the correspondence address to the address on the Request to Withdraw.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Currently, there is an outstanding Office action mailed May 26, 2010 that requires a reply.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Joan Olszewski Petitions Examiner Office of Petitions



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OFFICE OF PETITIONS

In re Application of

William E. Hood, IV

Application No. 11/460,832

Filed: July 28, 2006

Attorney Docket No. 043314/311766

DECISION ON PETITION TO WITHDRAW

FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 24, 2010.

The request is **NOT APPROVED**.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71, or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.

Therefore, as there is currently no Statement under 37 CFR 3.73(b) of record in the instant application, the Office cannot change the correspondence address to the address on the Request to Withdraw.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Currently, there is an outstanding Office action mailed May 26, 2010 that requires a reply.

Telephone inquires concerning this decision should be directed to the undersigned at

(571) 272-7751. Joan O. Dengush

Joan Olszewski Petitions Examiner Office of Petitions





Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

MAILED DEC 05 2011

JOHN S. BEULICK (12729) C/O ARMSTRONG TEASDALE LLP 7700 FORSYTH BOULEVARD SUITE 1800 ST. LOUIS MO 63105

OFFICE OF PETITIONS

In re Application of

Schilling

Application No. 11/461,010

Filed: July 31, 2006

Attorney Docket No. 179828(12729-573)

: DECISION DISMISSING PETITION

: UNDER 37 CFR 1.313(a)

This is a decision on the petition filed December 2, 2011 which is being treated under 37 CFR 1.313(a), requesting withdrawal of the above-identified application from issue.

The petition is **dismissed** as moot for the reasons stated below.

A review of the file record discloses that a Notice of Allowance and Fee(s) Due was mailed on October 4, 2011, with the issue fee being due on or before January 4, 2012. The petition states that the issue fee in this case has not been paid.

The filing of a petition under 37 CFR 1.313(a) is unnecessary, since the mere filing of an RCE and submission will effectively withdraw an application from issue prior to payment of the issue fee. In view thereof, the petition to withdraw from issue is dismissed as involving a moot issue. *Note* MPEP §§ 706.07(h)(IX) and 1308.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3208.

The matter is being referred to Technology Center AU 3741 for appropriate processing of the RCE filed December 2, 2011, and for consideration of the concurrently filed IDS.

/KOC/ Karen Creasy Petitions Examiner Office of Petitions



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/461,045	07/31/2006	Minh Tran	10988.0011-00000	3037
22852 FINNEGAN F	7590 04/11/2011 JENDERSON FARARO	W, GARRETT & DUNNER	EXAM	INER
LLP	·	w, GARGETT & DONNER	NELSON, C	CHRISTINE
	RK AVENUE, NW N, DC 20001-4413		ART UNIT	PAPER NUMBER
	.,		3775	
			MAIL DATE	DELIVERY MODE
			04/11/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO. FILING DATE FIRST NAMED INVENTOR / PATENT IN REEXAMINATION

11461045 7/31/2006 TRAN ET AL. 10988.0011-00000

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP

901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413

EXAMINER

CHRISTINE L.. NELSON

ART UNIT PAPER

3775

20110404

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

In view of the papers filed February 9, 2011, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by adding Donald Schomer and Murray David Solsberg as coinventors.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

/Thomas C. Barrett/
Supervisory Patent Examiner, Art Unit 3775

/CHRISTINE L. NELSON/ Examiner, Art Unit 3775



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/04/2010

WILLIAMS, MORGAN & AMERSON 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042

Applicant: Tjietse van der Gaast: DECISION ON REQUEST FORPatent Number: 7653019: RECALCULATION of PATENT

Issue Date : 01/26/2010 : TERM ADJUSTMENT IN VIEW

Application No: 11/461,054 : OF WYETH AND NOTICE OF INTENT TO

Filed : 07/31/2006 : ISSUE CERTIFICATE OF CORRECTION

:

The Request for Recalculation is **GRANTED** to the extent indicated.

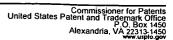
The patent term adjustment has been determined to be $\bf 558$ days. The USPTO will $\it suasponte$ issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.





SANDISK CORPORATION
JENKINS, WILSON, TAYLOR & HUNT, P.A.
SUITE 1200 UNIVERSITY TOWER
3100 TOWER BOULEVARD
DURHAM NC 27707

MAILED

SEP 17 2010

In re Patent No. 7,680,974 Issued: March 16, 2010

Application No. 11/461,063

Filed: July 31, 2006

Attorney Docket Number: SOC0233.002US

(1694/38/2 CON)

OFFICE OF PETITIONS

ON PETITION

This is a decision on the REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 C.F.R. § 1.183 AND M.P.E.P. § 307 FOR WAIVER OF 37 C.F.R. § 3.81(a) TO ALLOW ADDITION OF ASSIGNEE TO ISSUED PATENT filed August 18, 2010, by way of a certificate of correction.

The petition is **GRANTED**.

Petitioner states that the subject patent issued from a continuation application and that the parent application was jointly assigned to SanDisk Corporation and Socket Communications Inc. but that the name of a second assignee was inadvertently not included on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee in the instant matter. Accordingly, petitioner requests that a certificate of correction be issued to reflect the name of SanDisk Corporation and Socket Communications Inc. on the front page of the Letters Patent.

In view thereof, and since Office assignment records reflect that SanDisk Corporation and Socket Communications Inc. are the assignees of record as the assignment was recorded with the parent application no. 09/653,062 the request complies with the provisions of 37 CFR 3.81(b) and it is therefore appropriate for a certificate of correction to issue.

The petition fee in the amount of \$130.00 and the fee for the certificate of correction in the amount of \$100 have been applied.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3212. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

This file is being referred to the Certificates of Correction Branch for issuance of a certificate of correction.

Patricia Faison-Ball Senior Petitions Attorney Office of Petitions SPE RESPONSE FOR CERTIFICATE OF CORRECTION

PAPER NO.:

DATE

: 11/22/10

TO SPE OF

: ART UNIT 2837 Attn: BENSON WALTER (SPE)

SUBJECT

PTOL-306 (REV. 7/03)

: Request for Certificate of Correction for Appl. No.: 11/461170 Patent No.: 7622876

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the COCIN document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code COCX.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC) Randolph Square Building (RSQ) 2800 South Randolph Street, Suite 9XXXX Arlington, VA 22206 **PALM Location 7580**

Tasneem Siddiqui

Certificates of Correction Branch 703-756-1593

Hard State of the	
dentified correction(s) is hereby:	
All changes apply.	
Specify below which changes do not a	pply
State the reasons for denial below.	
/Walter Benson/ AU 2837	
	All changes apply. Specify below which changes do not a State the reasons for denial below.

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

Art Unit



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Handley Law Firm, PLLC Roger N. Chauza, PC PO BOX 140036 IRVING TX 75014

MAILED

OCT 14 2010

OFFICE OF PETITIONS

In re Application of

Rodney Underhill

Application No. 11/461,284

Filed: July 31, 2006

Attorney Docket No. CISC.10001

ON PETITION

This is a decision on the petitions under the unintentional provisions of 37 CFR 1.137(b), filed July 23, 2010 and August 17, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the final Office action mailed, April 21, 2009, which set a shortened statutory period for reply of three (3) months. A three month extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 22, 2009. A Notice of Abandonment was mailed on December 9, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b), (2) the petition fee of \$810 and (3) a proper statement of unintentional delay. Accordingly, the filing of a continuing application under 37 CFR 1.53(b) is accepted as being unintentionally delayed.

The application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the application, the application is again abandoned in favor of a continuing application under 37 CFR 1.53(b).

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

/Kimberly Inabinet/

Kimberly Inabinet Petitions Examiner Office of Petitions

		Paper No.:
DATE	: <u>3/19/11</u>	
TO SPE OF	: ART UNIT <u>1745</u>	·
SUBJECT	: Request for Certificate of Correct	ction for Appl. No.: <u>11461307</u> Patent No.: <u>7754041</u>
		CofC mailroom date: 03/11/11
Please resp	ond to this request for a ce	ertificate of correction within 7 days.
OR IFW F	ILES:	•
he IFW ap	ew the requested changes/oplication image. No new mathematical the claims be changed.	corrections as shown in the COCIN document(s) in atter should be introduced, nor should the scope or
	nplete the response (see be ment code COCX.	elow) and forward the completed response to scanning
FOR PAPE	R FILES:	
Please revi	ew the requested changes/	corrections as shown in the attached certificate of
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correction. Cert Ran Paln	ificates of Correction Brai dolph Square – 9D10-A n Location 7580	(see below) and forward it with the file to: nch (CofC)
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Cert Ran Paln Vert	ificates of Correction Braidolph Square – 9D10-An Location 7580	(see below) and forward it with the file to: nch (CofC) Quamente Newsome
Cert Ran Paln Vert	ificates of Correction Braidolph Square – 9D10-An Location 7580	(see below) and forward it with the file to: nch (CofC) Camonte Newsome Certificates of Correction Branch 571-272-3421 dentified correction(s) is hereby: RICHARD CRISPINO SUPERVISORY PATENT EXAMIN
Cert Ran Paln Vert	ificates of Correction Braidolph Square – 9D10-An Location 7580 For Your Assistance St for issuing the above-ic on on the appropriate box.	(see below) and forward it with the file to: nch (CofC) Camonte Newsome Certificates of Correction Branch 571-272-3421 dentified correction(s) is hereby: RICHARD CRISPINO
Thank You The reque	ificates of Correction Braidolph Square – 9D10-An Location 7580 For Your Assistance st for issuing the above-ic on on the appropriate box.	(see below) and forward it with the file to: nch (CofC) Camonte Newsome Certificates of Correction Branch 571-272-3421 dentified correction(s) is hereby: RICHARD CRISPINO SUPERVISORY PATENT EXAMIN TECHNOLOGY CENTER 1700

PTOL-306 (REV. 7/03)

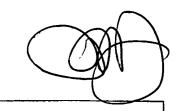
U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

	SPE RESPONSE FOR C	CERTIFICATE OF CORRECTION
DATE	:August 16. 2011	
TO SPE OF	: ART UNIT	
SUBJECT	: Request for Certificate of Correction t	for Appl. No.: <u>11/461.389</u> Patent No.:7922083
		CofC mailroom date: 07/01/11
Please resp	ond to this request for a certific	ate of correction within 7 days.
FOR IFW F	ILES:	
the IFW app		ections as shown in the COCIN document(s) in should be introduced, nor should the scope or
	plete the response (see below) ment code COCX.	and forward the completed response to scanning
FOR PAPE	R FILES:	
		ctions as shown in the attached certificate of below) and forward it with the file to:
Rand Palm	ficates of Correction Branch (dolph Square – 9D10-A a Location 7580 ould the changes be	CofC) <u>RoChaun Hardwick</u>
	made?	Certificates of Correction Branch
		571 272-0470
Thank You	For Your Assistance	
	st for issuing the above-identif n on the appropriate box.	fied correction(s) is hereby:
X	Approved	All changes apply.
	Approved in Part	Specify below which changes do not apply.
	Denied	State the reasons for denial below.
Comments	: The request for Certificate of Cor	rection filed on July 1. 2011 has been reviewed and
approved.		
ECONOMIC DE LA CONTRACTOR DE LA CONTRACT		
		/Steven S. Paik/ 2887

PTOL-306 (REV. 7/03)

Art Unit

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office



SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Please review to the IFW applications of the superior of the s	I to this request for a cert <u>S</u> : he requested changes/co	ion for Appl. No. 11461.392.: 7590557 difficate of correction within 7 days. Difference of correction within 7 days. Difference of correction within 7 days. Difference of correction within 7 days.
Please respond FOR IFW FILES Please review to the IFW applications are meaning of the	Request for Certificate of Correcti I to this request for a cert S: he requested changes/co ation image. No new mat	orrections as shown in the COCIN document(s) in
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using documen		ow) and forward the completed response to scanning
FOR PAPER F	ILES:	
		orrections as shown in the attached certificate of see below) and forward it with the file to:
Certifica	tes of Correction Branc	ch (CofC)
Should the chang Be made?	je(s)	RoChaun Johnson Certificates of Correction Branch
		571 272-0470
Thank You Fo	r Your Assistance	
The request for Note your decision on the		entified correction(s) is hereby:
⋊ A _l	pproved	All changes apply.
_ A _l	pproved in Part	Specify below which changes do not apply.
	enied	State the reasons for denial below.
Comments:		

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

PTOL-306 (REV. 7/03)



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

STERNE, KESSLER, GOLDSTEIN & FOX, P.L.L.C. 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005-3934

MAILED

In re Application of

Sarah E. Harrison, et al.

Application No. 11/461,394

Filed: June 31, 2006

Attorney Docket No.: 3222.6720008

AUG 3 0 2010

OFFICE OF PETITIONSDECISION ON PETITION

UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition filed February 3, 2010, which is being treated under the provisions of 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional applications set forth in the concurrently filed Application Data Sheet (ADS). The delay in responding is regretted; however, the petition was recently referred to the undersigned for consideration.

The petition is **DISMISSED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in $\S 1.17(t)$; and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy items (1) above.

While a reference to the prior-filed provisional applications have been included in an amendment to the first sentence of the specification following the title, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications. An incorporation by

reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (see 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. § 119(e) after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 119(e) is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. See Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). Note MPEP §§ 201.06(c) and 608.04(b).

Accordingly, before the petition under 37 CFR 1.78(a)(6) can be granted, a renewed petition under 37 CFR 1.78(a)(6) and either an Application Data Sheet or a substitute amendment (complying with 37 CFR 1.121 and 37 CFR 1.76(b)(5)) deleting the incorporation by reference statement, are required.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:

Mail Stop PETITIONS

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

By Internet:

EFS-Web¹

Telephone inquiries concerning this decision should be directed to Sherry Brinkley at (571) 272-3204.

Sherry D. Brinkley Petitions Examiner

Office of Petitions

¹ www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS MN 55440-1022

> MAILED MAR 22 2012 **OFFICE OF PETITIONS**

In re Patent No. 8,077,535

Schakel et al.

Issue Date: 12/13/2011

Application Number: 11/461,437 : PATENT TERM ADJUSTMENT

Filing Date: 07/31/2006

Attorney Docket Number: 16113-

1910001

: DECISION ON REQUEST FOR

: RECONSIDERATION OF

: and

: NOTICE OF INTENT TO ISSUE

: CERTIFICATE OF CORRECTION

This is a decision on the petition under 37 CFR 1.705(d), filed on February 10, 2012, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by three hundred nine (309) days. For the reasons stated below, the request for reconsideration will be treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one hundred sixty-eight (168) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one hundred sixty-eight (168) days is GRANTED TO THE EXTENT INDICATED.

BACKGROUND

On December 13, 2011, the above-identified application matured into U.S. Patent No. 8,077,535, with a revised patent term adjustment of 193 days. On February 10, 2012, patentee timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 309 days.

Patentee argues that the 87 day period of reduction for applicant delay pursuant to 37 CFR 1.704(b), for the filing of a reply on July 22, 2009, 3 months and 87 days after the mailing of an Office action on January 26, 2009, is not warranted because April 26, 2009, fell on a Sunday. Patentee asserts that the period of delay should be 86 days rather than 87 days.

Upon review, patentee's argument is persuasive. This reduction has been reconsidered, and it is determined that entry of a reduction of 87 days for this reply timely filed pursuant to 35 U.S.C. § 21(b) is not warranted. Rather, the period of reduction for this reply is 86 days. Accordingly, the period of reduction of 87 day is removed, and a period of reduction of 86 days is entered.

Patentee discloses that a 2 day period of reduction for applicant delay pursuant to 37 CFR 1.704(c)(8) is warranted, for the filing of a supplemental reply or other paper on May 12, 2010, two days after the day after the date a reply was filed, May 10, 2010.

Upon review, patentee's statement is correct. A period of reduction of 2 days for applicant delay will be entered.

Patentee asserts that the 41 day period of reduction for applicant delay pursuant to 37 CFR 1.704(c)(8), for the filing of a supplemental reply or other paper on June 13, 2011, 41 days after day after the date of the filing of a reply on May 3, 2011, is incorrect. Patentee states that the correct period of reduction is 65 days, because an additional supplemental reply or other paper was filed on July 7, 2011, 65 days after the day after the date the reply of May 3, 2011 was filed.

Upon review, patentee's assertion is correct. On May 3, 2011, a reply was filed. On June 13, 2011, a supplemental reply or other paper (an Information Disclosure Statement (IDS)) was

filed, 41 days after the day after the date the initial reply was filed. On July 7, 2011, a supplemental reply or other paper (an IDS) was filed, 65 days after the day after the date the initial reply was filed. The 41 days overlaps with the 65 days, and the non-overlapping period is 65 days. Therefore, the 41 day period of reduction will be removed, and a 65 day period of reduction will be entered.

Patentee maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on July 25, 2011, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 141 day period from July 25, 2011 (the mailing date of the Notice of Allowance) until December 13, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 141 days and be increased from 282 to 423 days. Patentee concludes that the correct patent term adjustment is 309 days (the sum of $^{-}$ 267 days of "A delay" and 423 days of "B delay" minus 0 days of overlap between "A delay" and "B delay" -381 days of applicant delay).

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including -

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the

Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

- (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
- . (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
- (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
- (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
- (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(I)(B)(i) and 37 CFR 1.702(b)(i) as 282 days based on the application having been filed under 35 U.S.C. lll(a) on July 31, 2006, and the patent not having issued as of the day after the three year date, July 31, 2009, and a request for continued examination under 132(b) having been filed on May 10, 2010. In other words, the 141-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b). Thus, with respect to calculating the "B delay", where applicant has filed a request for continued examination the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of

¹ Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

⁽a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

⁽¹⁾ Payment of the issue fee, unless a petition under § 1.313 is

⁽²⁾ Abandonment of the application; or

⁽³⁾ The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

⁽b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of

allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, No. 07-1492, 2008 U.S. Dist. LEXIS 76063 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. mitigate this effect, the statute, inter alia, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)2. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Websters Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b) (the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title,

Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will

withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures³ permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant

Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on May 10, 2010, and the patent issued by virtue of that request on December 13, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on May 10, 2010 and ending on December 13, 2011 is not included in calculating Office delay.

CONCLUSION

Accordingly, the patent term adjustment is 168 days (267 days of A delay + 282 days of B delay - 0 days of overlap - 381 days of applicant delay).

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one hundred sixty-eight (168) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Douglas I. Wood

Senior Petitions Attorney

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

: 8,077,535 B2

DATED

: Dec. 13, 2011

DRAFT

INVENTOR(S): Schakel et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [*] Notice: under 35 USC 154(b) by 193 days.

Delete the phrase "by 193 days" and insert – by 168 days--



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/461,448	07/31/2006	Robert P. Morris	1418/US	3625
	7590 11/08/2010 SEARCH, LLC		EXAM	INER
5400 Trinity Ro			MINCEY, JE	RMAINE A
Suite 303 Raleigh, NC 27	607		ART UNIT	PAPER NUMBER
Raieigii, NC 27	007		2165	
			MAIL DATE	DELIVERY MODE
			11/08/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Theodosios Thomas SCENERA RESEARCH, LLC 5400 Trinity Road Suite 303 Raleigh, North Carolina 27607

In re Application of: Robert P. MORRIS

Appl. No.: 11/461,448
Filed: July 31, 2006
For: METHODS AND SYSTEMS FOR SYNCHRONIZING DATA USING A PRESENCE SERVICE

DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecutions under 37 CFR § 1.103(a) filed on 02 November 2010.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 02 November 2010, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of three (3) months from the mailing date of this letter. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.

./Vincent N. Trans/ Vincent N. Trans, SPRE/QAS Technology Center 2100 Computer Architecture and Software



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/461,448	07/31/2006	Robert P. Morris	I418/US	3625
49278 SCENERA RE	7590 05/10/2011 SSFÅRCH LLC	·	EXAM	INER
SCENERA RESEÄRCH, LLC 5400 Trinity Road			MINCEY, JERMAINE A	
Suite 303 Raleigh, NC 2	7607		ART UNIT	PAPER NUMBER
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			MAIL DATE	DELIVERY MODE
			05/10/2011	PAPER

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Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Theodosios Thomas SCENERA RESEARCH, LLC 5400 Trinity Road Suite 303 Raleigh, North Carolina 27607

In re Application of:
Robert P. MORRIS
Appl. No.: 11/461,448
Filed: July 31, 2006
For: METHODS AND SYSTEMS FOR SYNCHRONIZING DATA USING A PRESENCE SERVICE

DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecutions under 37 CFR § 1.103(a) filed on 09 May 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 09 May 2011, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of three (3) months from the mailing date of this letter. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/

Vincent N. Trans, SPRE/QAS Technology Center 2100 Computer Architecture and Software



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UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
11/461,448	07/31/2006	Robert P. Morris	1418/US	3625	
49278 SCENERA RE	7590 08/11/2011 SEARCH, LLC		EXAM	INER	
5400 Trinity Road			MINCEY, JE	MINCEY, JERMAINE A	
Suite 303 Raleigh, NC 27607		ART UNIT	PAPER NUMBER		
			2161		
		,			
			MAIL DATE	DELIVERY MODE	
			08/11/2011	PAPER	

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Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Kevin L. Wingate SCENERA RESEARCH, LLC 5400 Trinity Road Suite 303 Raleigh, North Carolina 27607

In re Application of:
Robert P. MORRIS
Appl. No.: 11/461,448
Filed: July 31, 2006
For: METHODS AND SYSTEMS FOR SYNCHRONIZING
DATA USING A PRESENCE SERVICE

DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecutions under 37 CFR § 1.103(a) filed on 09 August 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 09 August 2011, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of three (3) months from the mailing date of this letter. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.

[Vincent N. Trans] Vincent N. Trans, SPRE/QAS Technology Center 2100 Computer Architecture and Software



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.usplo.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO	
11/461,448	07/31/2006	Robert P. Morris	I418/US	3625	
49278 SCENERA RE	7590 11/21/2011		EXAM	INER	
SCENERA RESEARCH, LLC 5400 Trinity Road			MINCEY, JE	MINCEY, JERMAINE A	
Suite 303			ART UNIT	PAPER NUMBER	
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			MAIL DATE	DELIVERY MODE	
			11/21/2011	PAPER	

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Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Kevin L. Wingate SCENERA RESEARCH, LLC 5400 Trinity Road Suite 303 Raleigh, North Carolina 27607

In re Application of:
Robert P. MORRIS
Appl. No.: 11/461,448
Filed: July 31, 2006
For: METHODS AND SYSTEMS FOR SYNCHRONIZING DATA USING A PRESENCE SERVICE

DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecutions under 37 CFR § 1.103(a) filed on 14 November 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 14 November 2011, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of three (3) months from the mailing date of this letter. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/ Vincent N. Trans, QAS Technology Center 2100 Computer Architecture and Software



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/461,448	07/31/2006	Robert P. Morris	I418/US	3625
	7590 02/23/2012 SEARCH, LLC		EXAM	INER
5400 Trinity Re			MINCEY, JE	RMAINE A
Suite 303 Raleigh, NC 27	607		ART UNIT	PAPER NUMBER
			2161	
			MAIL DATE	DELIVERY MODE
			02/23/2012	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Theodosios Thomas SCENERA RESEARCH, LLC 5400 Trinity Road Suite 303 Raleigh, North Carolina 27607

In re Application of:
Robert P. MORRIS
Appl. No.: 11/461,448
Filed: July 31, 2006
For: METHODS AND SYSTEMS FOR SYNCHRONIZING
DATA USING A PRESENCE SERVICE

DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecutions under 37 CFR § 1.103(a) filed on 22 February 2012.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 22 February 2012, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of three (3) months from the mailing date of this letter. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/ Vincent N. Trans, QAS Technology Center 2100 Computer Architecture and Software

		FOR CERTIFICATE OF CORRECTION	
		Paper No.: _	
DATE	:05-07-11		
TO SPE OF	: ART UNIT1627		
SUBJECT	: Request for Certificate of Cor	rection for Appl. No.: <u>11/461517</u> Patent No.: <u>7767718</u>	
		CofC mailroom date: 08-19-10	
Please respo	nd to this request for a c	certificate of correction within 7 days.	
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Please review correction. P	v the requested changes lease complete this forn	s/corrections as shown in the attached certificate of n (see below) and forward it with the file to:	
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		Angela Green Certificates of Correction Branc (703) 756-1541	h
Thank You F	For Your Assistance	Certificates of Correction Branch	h
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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

TEITELBAUM & MACLEAN
280 SUNNYSIDE AVENUE
OTTAWA ON K1S 0R8 CA CANADA

MAILED

SEP 0 1 2010

OFFICE OF PETITIONS

In re Application of

Colbourne et al.

Application No. 11/461,542

Filed: August 1, 2006

Attorney Docket No. 10-613 US

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 6, 2008, to revive the above-identified application.

The petition is GRANTED.

This application became abandoned for failure to timely pay the issue and publication fees and to submit corrected formal drawings on or before February 6, 2008, as required by the Notice of Allowance and Fee(s) Due and the Notice of Allowability, mailed November 6, 2007. Accordingly, the date of abandonment of this application is February 7, 2008. A Notice of Abandonment was mailed February 29, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of \$1,440.00, the publication fee of \$300.00, and corrected formal drawings, (2) the petition fee of \$1,540.00; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Publishing Division for processing into a patent and review of the corrected drawings submitted with the instant petition.

Joan Olszewski

Petitions Examiner

-Joan Olszenk

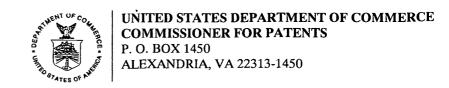
Office of Petitions

TO SPE OF : A SUBJECT : F Please respond FOR IFW FILES Please review t the IFW applicat meaning of the	I to this request for a certificate of <u>S</u> : he requested changes/correction image. No new matter sho claims be changed. te the response (see below) and the code COCX .	Paper No.: ppl. No.: 11/461,542 Patent No. 7,813,040 CofC mailroom date 10/12/11
TO SPE OF : A SUBJECT : F Please respond FOR IFW FILE: Please review t the IFW applicat meaning of the Please complete	ART UNIT: 2872 Request for Certificate of Correction for Ap I to this request for a certificate of S: the requested changes/correction ation image. No new matter sho claims be changed. the response (see below) and the code COCX.	CofC mailroom date 10/12/11 of correction within 7 days. ns as shown in the COCIN document(s) in ould be introduced, nor should the scope or
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		ns as shown in the attached certificate of ow) and forward it with the file to:
Randolp	tes of Correction Branch (Cof h Square – 9D10-A cation 7580	C)
		Ernest C. White, LIE
		Certificates of Correction Branch
		703-756-1814
Thank You For	r Your Assistance	
The request fo	r issuing the above-identified he appropriate box.	correction(s) is hereby:
□ Aŗ	pproved	All changes apply.
□ A _l	pproved in Part	Specify below which changes do not apply.
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Comments: Pr	oposed changes to Figure 4 would i	introduce new matter to the issued patent
document. Contra	ary to Applicant's assertion, no actu	al drawing amendments were filed in the response
	all instances of the reference numera	on were specifically made in the response filed

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

SupervisoryPatent Examiner



Date -

: 10/24/2011

Patent No.

: 7,813,040 B2

Serial No.

: 11/461,542

Inventor(s)

: Colbourne et al.

Issue Date

: October 12, 2010

Title

: MULTI-STAGE OPTICAL ISOLATOR

Doc./File No.

: 10-613 US

Re: Consideration for Certificate of Correction

Consideration has been given your request for a certificate of correction, for the above-identified patent under the provisions of Rule 1.322.

Respecting the alleged error(s) in your request, after further review, your request in this matter is denied. (See attached report under comments)

Further consideration will be given concerning this matter upon receipt of a request for **Reconsideration** (reconsideration should be accompanied by supporting document(s) such as, amendment, postcard receipt, 1449/892, etc.) and should be filed and directed to Decisions & Certificates of Correction Branch.

Ernest C. White, *LIE* (571) 572-3385 Mary F. Diggs, *Supervisor* (703) 756-1580 Decisions & Certificates of Correction Branch ernest.white@uspto.gov

TEITELBAUM & MACLEAN 280 SUNNYSIDE AVENUE OTTAWA ON K1S 0R8 CA CANADA

ECW

	SPE RESPONSE FO	OR CERTIFICATE OF CORRECTION
DATE		Paper No.:
DATE TO SDE OF	: 10/20/11	
TO SPE OF	: ART UNIT: <u>2872</u>	7.012.040
SUBJECT	: Request for Certificate of Correct	tion for Appl. No.: $11/461,542$ Patent No. $7,813,040$
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		Ernest C. White, LIE
		Certificates of Correction Branch
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	st for issuing the above-ide on on the appropriate box.	entified correction(s) is hereby:
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	Approved in Part	Specify below which changes do not apply.
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Comments	: Proposed changes to Figure	4 would introduce new matter to the issued patent
document, C	ontrary to Applicant's assertion	. no actual drawing amendments were filed in the response
dated 9/9/10.	Further, amendments to the sp	ecification were specifically made in the response filed

Stephone B. Allen

SPE Art Unit
U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

PTOL-306 (REV. 7/03)

6/25/07 to delete all instances of the reference numeral



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

GLOBUS MEDICAL, INC. 2560 GENERAL ARMISTEAD AVENUE AUDUBON PA 19403

MAILED

FEB 17 2012

In re Application of

Dwyer, et al.

Application No. 11/461,610

Filed/Deposited: 1 August, 2006

Attorney Docket No. 0218.026.0022

OFFICE OF PETITIONS

DECISION

This is a decision on the papers filed on 28 December, 2011, pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

The petition pursuant to 37 C.F.R. §1.137(b) is **GRANTED**.

As to the Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP \$711.03(c)(II).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the final Office action mailed on 16 March, 2011, with reply due absent an extension of time on or 16 June, 2011.

On 13 June, 2011, Petitioner filed an amendment after final, which the Examiner refused to enter and Petitioner—as one registered to practice before the Office—knew was not as of right and not

a proper reply¹ if it did not *prima facie* place the application in condition for allowance, and on 12 July, 2011, the Examiner mailed an Advisory Action.

The application went abandoned by operation of law after midnight 16 June, 2011.

It does not appear that the Office mailed the Notice of Abandonment before a petition was filed.

On 28 December, 2011, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee/fee authorization, with a statement of unintentional delay and a reply in the form of a request for continued examination (RCE) and fee and a submission under the provisions of 37 C.F.R. §1.114 in the form of an amendment

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.²

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.³,⁴

A proper reply is an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal, or an RCE (with fee and submission under 37 C.F.R. §1.114). (See: MPEP §711.03(c).)

² See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §11.18, formerly §10.18, to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on

Application No. 11/461,610

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.⁵

As to Allegations of Unintentional Delay

As indicated above, the requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a proper reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is granted.

petition. (Therefore, by example, an <u>unavoidable</u> delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under <u>Pratt</u>, and so cannot satisfy the test for diligence and due care. (By contrast, <u>unintentional</u> delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, <u>and</u> also, by definition, are not intentional.))

In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

Application No. 11/461,610

The instant application is released to the Technology Center/AU 3733 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2⁶) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

⁶ The regulations at 37 C.F.R. §1.2 provide: §1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attdance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL MN 55133-3427

MAILED

OCT 18 2010

OFFICE OF PETITIONS

In re Application of

Downs et al.

Application Number: 11/461637

DECISION ON PETITION

Filing Date: 08/01/2006 Attorney Docket Number:

65632US002

This is a decision on the renewed petition under 37 CFR 1.137(b), filed on August 2, 2010, to revive the above-identified application.

The petition is GRANTED.

This application became abandoned on October 31, 2009, for failure to timely file a proper reply to the final Office action mailed on July 30, 2009, which set a three (3)-month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on February 23, 2010. The petition filed on March 5, 2010, was dismissed on June 2, 2010.

Receipt of the RCE filed on August 2, 2010 and the reply filed on March 5, 2010 is acknowledged.

The application is referred to Technology Center Art Unit 3772 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

Douglas I. Wood

Senior Petitions Attorney

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

CANTOR COLBURN LLP - IBM TUSCON DIVISION **20 CHURCH STREET** 22ND FLOOR **HARTFORD CT 06103**

MAILED APR 05 2011 OFFICE OF PETITIONS

In re Application of

Christopher J. Stakutis et al.

Application No. 11/461,685

Filed: August 01, 2006

Attorney Docket No. SJO920050116US1

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 16, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, July 12, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 13, 2010.

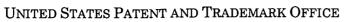
The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$1620, and (3) a proper statement of unintentional delay. Accordingly, the response to the non-final office action of July 12, 2010 is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to Technology Center AU 2156 for appropriate action on the concurrently filed amendment.

Rawesh Krishnamurthy Petitions Examiner Office of Petitions





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

HAYNES AND BOONE, LLP IP Section 2323 Victory Avenue Suite 700 Dallas TX 75219

MAILED

SEP 01 2010

In re Application of

OFFICE OF PETITIONS

Eric Hamilton et al.

DECISION ON PETITION

Application No. 11/461,748 Filed: August 1, 2006

TO WITHDRAW FROM RECORD

Attorney Docket No. 41403.44

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37

The request is **NOT APPROVED.**

C.F.R. § 1.36(b), filed August 11, 2010.

The Office will no longer accept address changes to a new practitioner or law firm filed with a Request, absent the filing of a power of attorney to the new representative. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor. This change has been made in order to avoid subsequent correspondence being directed to an incorrect address or to a practitioner who has not been appointed as practitioner of record by the applicant.

Accordingly, the request to withdraw from record cannot be approved because the change of correspondence address is not that of: (1) the first named inventor; or (2) an assignee of the entire interest under 37 C.F.R 3.71, who has properly intervened.

The file record indicates that a new assignment has been filed with the Assignment Branch from Zvue Corporation to Internet Entertainment, LLC, recorded on 12/30/2009, followed by a termination of Security Interest, recorded on 1/15/10. In order to update the application, a Statement under 37 CFR 3.73(b), must be submitted with any renewed request, which includes a proper chain of title, including reel and frame numbers. The Office is not aware of any other changes made regarding the assignment records. If there are any changes, please update the application file.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-4618.

/Kimberly Inabinet/

Kimberly Inabinet Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

QUALCOMM INCORPORATED 5775 MOREHOUSE DR. SAN DIEGO, CA 92121

MAILED

FEB 1 5 2011

OFFICE OF PETITIONS

In re Application of

Stempel et al.

Application No. 11/461,883

Filed: August 2, 2006

Attorney Docket No. 060334

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 8, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before October 13, 2010, as required by the Notice of Allowance and Fee(s) Due mailed July 13, 2010. Accordingly, the application became abandoned on October 14, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of \$1,510 and the publication fee of \$300, (2) the petition fee of \$1,620, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely submit the issue and publication fees as required by the Notice of Allowance and Fee(s) Due is accepted as being unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

This application is being referred to the Office of Data Management for processing into a patent.

Alicia Kelley Petitions Examiner

Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

ENTROPY MATTERS LLC P.O. BOX 2250 NEW YORK, NY 10021

MAILED
DEC 0 7 2010
OFFICE OF PETITIONS

In re Application of Shiow-Hwei Hwang et al Application No. 11/461,893 Filed: August 2, 2006

ON PETITION

Attorney Docket No. 5222-10301/P1541

This is a decision on the petition, filed December 3, 2010 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on November 29, 2010 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2886 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

I The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

August 31, 2010

Scott C. Mayhew Womble Carlyle Sandridge & Rice, PLLC Attn: Patent Docketing P.O. Box 7037 Atlanta, GA 30357-0037

Patent No.

: 7,740,019 B2

Ser. No.

: 11/461,941

Inventor(s)

: John Larkin Nelson, et al.

Issued

: June 22, 2010

Docket No.

: R60999 1140.1 (60999 0008.1)

Title

: EQUIPMENT AND ASSOCIATED METHOD FOR INSERTION OF MATERIAL INTO

CIGARETTE FILTERS

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based solely on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing <u>incorrect or erroneous</u> assignment data, before issuance of a Certificate of Correction, under 37 CFR 1.323 (see Manual of Patent Examining Procedures (M.P.E.P) Chp. 1400, sect. 1481). This procedure is required at any time after the issue fee is paid, including after issuance of the patent.

In view of the foregoing, your request, in this matter, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

- A. the processing fee set forth in 37 CFR 1. 17(i) (currently \$130);
- <u>B.</u> a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
- <u>C.</u> a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail:

Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-0025

ATTN: Office of Petitions

If a fee (currently \$100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

/Virginia Tolbert/ Virginia Tolbert For Mary Diggs Decisions & Certificates of Correction Branch (571) 272-0460 or (703) 756-1814



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

MAILED

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

ATTN: IP DOCKETING

P.O. BOX 7037

ATLANTA, GA 30357-0037

DEC 1 6 2010

OFFICE OF PETITIONS

In re Patent No. 7,740,019

Issue Date: June 22, 2010 :

Application No. 11/461,941 : ON PETITION

Filed: August 2, 2006 :

Attorney Docket No.: R60999 1140.1 :

This is a decision on the petition filed October 21, 2010, which is being treated as a request under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

37 CFR 3.81(b), effective June 25, 2004, reads:

After payment of the issue fee: Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

Petitioner indicates that the assignment was recorded prior to issuance and has provided a request for a certificate of correction under § 1.323; however, it is noted that the fee required by § 1.20(a) and the processing fee set forth in § 1.17(i) have not been paid. The requisite fees will be charged to counsel's deposit account as authorized. Accordingly, the request complies with the provisions of 37 CFR 3.81(b).

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Sherry D. Brinkley Petitions Examiner

Office of Petitions

DATE : 6/27/2011	.
TO SPE OF : ART UNIT 2471 P	ham Chi (spe)
SUBJECT : Request for Certificate of Correct	tion for Appl. No.:Patent No.:
	tion for Appl. No.: Patent No.: Patent No.:
Please respond to this request for a cer	
FOR IFW FILES:	
	orrections as shown in the COCIN document(s) in tter should be introduced, nor should the scope or
Please complete the response (see below using document code COCX.	ow) and forward the completed response to scannin
FOR PAPER FILES:	
	orrections as shown in the attached certificate of see below) and forward it with the file to:
Certificates of Correction Bran- Randolph Square – 9D10-A Palm Location 7580	11 ~100
	571-272-8680
Thank You For Your Assistance	
The request for issuing the above-ide Note your decision on the appropriate box.	entified correction(s) is hereby:
Approved	All changes apply.
Approved in Part	Specify below which changes do not apply.
Denied	State the reasons for denial below.
Comments:	

PTOL-306 (REV. 7/03)

SPE Art Unit
U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED

FEB 03 2011

THOMAS, KAYDEN, HORSTEMEYER & RISLEY LLP 600 GALLERIA PARKWAY, 15TH FLOOR ATLANTA GA 30339

OFFICE OF PETITIONS

In re Application of

Hsiang-Chen Huang et al. Application No. 11/462,057

Filed: August 3, 2006

Attorney Docket No. 252011-4010

DECISION ON PETITION

This is a decision on the petition, filed March 25, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to reply to the Notification of Non-compliant Appeal Brief (Notification) mailed June 22, 2009, which set a one (1) month or thirty day period for reply. A Notice of Abandonment was mailed on March 15, 2010.

Petitioner asserts that the Notification dated June 22, 2009 was not received.

A review of the written record indicates no irregularity in the mailing of the Notification, and, in the absence of any irregularity, there is a strong presumption that the Notification was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notification was not in fact received.

The showing required to establish non-receipt of an Office communication must include:

(1) a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would

include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

- (2) Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received.
- (3) A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. See MPEP §711.03(c)(I)(A).

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy all of the above-stated requirements. Item (3) has not been provided. While the petition does include exhibits showing where the Notification would have been entered had it been received, these exhibits show information only for the above identified application. Item (3) above, requires master docket reports for the practitioner showing replies for all applications, not just the application in question.

Accordingly, absent the required evidence to establish non-receipt of the Notification of June 22, 2009, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$1,620 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37

CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

By facsimile:

(571) 273-8300

Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6842.

Carl Friedman

Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

THOMAS, KAYDEN, HORSTEMEYER & RISLEY LLP 400 INTERSTATE NORTH PARKWAY SE SUITE 1500 ATLANTA GA 30339

MAILED
AUG 0.3 2011
OFFICE OF PETITIONS

In re Application of

Hsiang-Chen Huang et al.

Application No. 11/462,057 : DECISION ON PETITION

Filed: August 3, 2006

Attorney Docket No. 252011-4010

This is a decision on the renewed petition under 37 CFR 1.181, filed February 15, 2011, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely reply to the Notification of Non-Compliant Appeal Brief (Notice), mailed June 22, 2009.

Petitioner asserts that the Notice dated June 22, 2009 was not received.

A review of the written record indicates no irregularity in the mailing of the Notice, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. In this regard, the showing required to establish the failure to receive the Notice must consist of the following:

- 1. a statement from practitioner stating that the Notice was not received by the practitioner;
- 2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Notice was not received; and
- 3. a copy of the docket record where the non-received Notice would have been entered and docketed had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The renewed petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby <u>vacated</u> and the holding of abandonment <u>withdrawn</u>.

The application is being forwarded to the Board of Patent Appeals and Interferences for remailing of the Notice mailed June 22, 2009.

Carl Friedman

Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MIDDLETON & REUTLINGER 2500 BROWN & WILLIAMSON TOWER (401 S. 4th Street, Suite 2500) LOUISVILLE KY 40202

MAILED

JUN 10 2011

OFFICE OF PETITIONS

In re Application of

James M. Kleinert Patent Number: 7,895,670

Issue Date: 03/01/2011

Application No. 11/462075

Filing or 371(c) Date: 08/03/2006 Attorney Docket Number: GLOVE DECISION ON REQUESTFOR RECALCULATION OF

: PATENT TERM ADJUSTMENT

This is a decision on the petition filed on May 2, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two hundred eighty-two (282) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by two hundred eighty-two (282) days is **DISMISSED**.

Applicants request an additional forty-two (42) days of patent term adjustment pursuant to 37 CFR 1.703(b), in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a), August 4, 2009, and ending on the date the patent issued, March 1, 2011, or 575 days, but not including the period of time from the filing of a Request for Continued Examination ("RCE"), filed September 15, 2009, to the date the patent issued, or 533 days.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on August 4, 2009, and ends on January 24, 2008, the day before the RCE, filed January 25, 2008, was filed, and is zero (0) days. See, 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 240 days, not 282 days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under

35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods/ Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVENUE, SUITE 5400 SEATTLE WA 98104-7092

MAILED

SEP 3 0 2010

OFFICE OF PETITIONS

In re Application of

Benjamin Duval et al

DECISION GRANTING STATUS

Application No. 11/462,110

UNDER 37 CFR 1.47(a)

Filed: August 3, 2006

Attorney Docket No. 852663.449

This is in response to the petition under 37 CFR 1.47(a), filed July 19, 2010.

The petition is **GRANTED**.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application.

The application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby <u>accorded Rule 1.47(a)</u> status.

As provided in 37 CFR 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

This application is being referred to the Office of Data Management to be processed into a patent.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3208.

/KOC/ Karen Creasy Petitions Examiner Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE CA 92614

MAILED

OFFICE OF PETITIONS

AUG 0 5 2010

In re Application of

Spain et al.

Application No. 11/462,258

Filed: August 3, 2006

Attorney Docket No. INTCOM.003A

DECISION ON PETITION TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed June 17, 2010.

The request is **DISMISSED**.

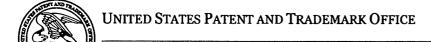
A review of the file record indicates that the attorneys/agents associated with Customer Number 20995: (1) do not have power of attorney in this patent application; but (2) have been employed or otherwise engaged in the proceedings in this patent application. The Office will no longer approve requests from practitioners to withdraw from applications where the requesting practitioner was never given power of attorney but is acting, or has acted, in a representative capacity pursuant to 37 CFR 1.34. In these situations, the practitioner is responsible for the correspondence the practitioner files in the application while acting in a representative capacity. As such, there is no need for the practitioner to obtain the Office's permission to withdraw from representation.

The change of correspondence address as listed in the Request to Withdraw cannot be accepted because it was not signed by an attorney of record. See MPEP §§ 601.03 and 405. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will continue to mail all future correspondence solely to the address of record until otherwise properly notified by the applicant.

There is an outstanding Office action, mailed April 5, 2010, which requires a reply. Failure to timely and properly do so will result in abandonment of the application.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-3206.

Petitions Examiner
Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No.

KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE CA 92614

MAILED

APR 2'1 2011

OFFICE OF PETITIONS

In re Application of :

Spain et al. : DECISION ON PETITION

Application No. 11/462,258 : Filed: August 3, 2006 : Atty Docket No. INTCOM.000GEN :

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed April 1, 2011.

The petition is GRANTED.

The above-identified application became abandoned for failure to file a timely and proper reply to the non-final Office action mailed April 5, 2010. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No reply timely filed and no extension of time obtained, the application became abandoned effective July 6, 2010. A courtesy Notice of Abandonment was mailed on December 30, 2010.

The petition includes the required reply in the form of an amendment, the required statement of unintentional delay and payment of the petition fee set forth in 37 CFR § 1.17(m). No terminal disclaimer is required.

Technology Center AU 2435 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the reply submitted on petition filed April 1, 2011.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

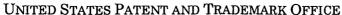
Nancy Johnson Senior Petitions Attorney

Office of Petitions

SPE RESPONSE	
	Paper No.:
DATE :09/17/10	
O SPE OF ART UNIT1624 SUBJECT Request for Certificate of Corr Please respond to this request for a c	ection for Appl. N <u>11/7462278</u> Pt. <u>7750012</u> ertificate of correction within 7 days.
FOR IFW FILES:	
	/corrections as shown in the COCIN document(s) in natter should be introduced, nor should the scope or
Please complete the response (see busing document code COCX.	elow) and forward the completed response to scanning
FOR PAPER FILES:	
Please review the requested changes	/corrections as shown in the attached certificate of
correction. Please complete this form	(see below) and forward it with the file to:
correction. Please complete this form Certificates of Correction Bra	(see below) and forward it with the file to:
·	(see below) and forward it with the file to: inch (CofC) 571 -270 -994. Magdalene Talley
·	(see below) and forward it with the file to: anch (CofC) 571 -270 -9942 Magdalene Talley Certificates of Correction Branch
Certificates of Correction Bra	i (see below) and forward it with the file to: inch (CofC) 571 -270 -9942 Magdalene Talley
·	(see below) and forward it with the file to: anch (CofC) 571 -270 -9942 Magdalene Talley Certificates of Correction Branch
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Certificates of Correction Bra Thank You For Your Assistance The request for issuing the above-i	(see below) and forward it with the file to: anch (CofC) 571-270-994 Magdalene Talley Certificates of Correction Branch 571 272-0423
Certificates of Correction Bra Thank You For Your Assistance The request for issuing the above-induction on the appropriate box.	(see below) and forward it with the file to: anch (CofC) 571-270-994 Magdalene Talley Certificates of Correction Branch 571 272-0423 dentified correction(s) is hereby:
Certificates of Correction Bra Thank You For Your Assistance The request for issuing the above-index your decision on the appropriate box. Approved	(see below) and forward it with the file to: anch (CofC) 571-270-9942 Magdalene Talley Certificates of Correction Branch 571 272-0423 dentified correction(s) is hereby: All changes apply.

PTOL-306 (REV. 7/03)

SPE Art Unit
U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

PEACOCK MYERS, P.C. 201 THIRD STREET, N.W. **SUITE 1340 ALBUQUERQUE, NM 87102**

MAILED JAN 14 2011 **OFFICE OF PETITIONS**

In re Application of

Armando Quinones

Application No. 11/462,288

Filed: August 3, 2006

Attorney Docket No. None

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 10, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office will require the practitioner(s) to certify that he, she or they have: (1) given reasonable notice to the client, prior to the expiration of the reply period, which the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any replies that may be due and the time frame within which the client must respond, pursuant to 37 CFR 10.40 (c).

The request was signed by Philip D. Askenazy on behalf of all the practitioners of record associated with Customer Number 05179.

Customer Number 05179 has been withdrawn as attorney from record. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There is an outstanding Non Final Office action mailed July 20, 2010 that requires a reply from the applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6059. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Alicia Kelley **Petitions Examiner** Office of Petitions

ARMANDO QUINONES cc:

P.O. BOX 876, NO 20 QUINONES ROAD

LA LUZ, NM 88337



5179

SUITE 1340

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE UNITED STATES DEPARTMENT OF COMMI United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Viginia 22313-1450 www.uspto.gov

APPLICATION NUMBER

FILING OR 371(C) DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

11/462,288

PEACOCK MYERS, P.C. 201 THIRD STREET, N.W.

ALBUQUERQUE, NM 87102

08/03/2006

Armando Quinones

CONFIRMATION NO. 5034 POWER OF ATTORNEY NOTICE



Date Mailed: 01/14/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/10/2010.

• The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

	/atkelley/
*	<u> </u>

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

HOSOON LEE 9600 SW OAK ST. SUITE 525 **TIGARD, OR 97223**

MAILED

MAR 09 2011

OFFICE OF PETITIONS

In re Application of **Bu-IL JEON**

Application No. 11/462,313

Filed: August 3, 2006

Attorney Docket No. 3576-024

DECISION GRANTING PETITION

UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed March 3, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on February 22, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.1

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 1716 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/ Petitions Examiner, Office of Petitions

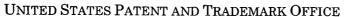
The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B - Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.

DATE	:June 2. 2011				
TO SPE OF	: ART UNIT 1781				
SUBJECT	: Request for Certificate of Correction for Appl. No.: 11/462.444 Patent No.: 7947316				
		CofC mailroom date:	05-27-		
Please resp	ond to this request for a certific	cate of correction within 7 days.			
FOR IFW F	ILES:				
IFW applica		ections as shown in the COCIN docume ould be introduced, nor should the scope	` '		
	plete the response (see below) ment code COCX .	and forward the completed response to	scanning		
FOR PAPE	R FILES:				
	•	ections as shown in the attached certifice below) and forward it with the file to:	ate of		
correction. Certi Ranc	•	e below) and forward it with the file to:	ate of		
correction. Certi Ranc Palm	Please complete this form (see ficates of Correction Branch dolph Square – 9D10-A	e below) and forward it with the file to:			
correction. Certi Ranc Palm	Please complete this form (see ficates of Correction Branch dolph Square – 9D10-A Location 7580	e below) and forward it with the file to: (CofC)			
correction. Certi Ranc Palm	Please complete this form (see ficates of Correction Branch dolph Square – 9D10-A Location 7580	e below) and forward it with the file to: (CofC) RoChaun Johnson-Hardwick			
Correction. Certi Ranc Palm Note:shou	Please complete this form (see ficates of Correction Branch dolph Square – 9D10-A Location 7580	e below) and forward it with the file to: (CofC) RoChaun Johnson-Hardwick Certificates of Correction			
Correction. Certi Ranc Palm Note: shou	Please complete this form (see ficates of Correction Branch dolph Square – 9D10-An Location 7580 ald the drawings be accepted?	RoChaun Johnson-Hardwick Certificates of Correction 571 272-0470			
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Correction. Certi Ranc Palm Note: shou Thank You The reques Note your decisio	Please complete this form (see ficates of Correction Branch dolph Square – 9D10-An Location 7580 and the drawings be accepted? For Your Assistance st for issuing the above-identing on the appropriate box. Approved	Pochaun Johnson-Hardwick Certificates of Correction 571 272-0470 ified correction(s) is hereby: All changes apply.	on Branch		

/D. Lawrence Tarazano/ SPE AU 1781

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

	SEL HESEONSE	TON CENTILICATE OF CONNECTION
		Paper No .:20111014
DATE	: October 14, 2011	
TO SPE	OF: ART UNIT 2166	
SUBJEC	r : Request for Certificate of C	Correction on Patent No.: 7,860,826
A response	e is requested with respect to the a	ccompanying request for a certificate of correction.
Certificat	omplete this form and return with t es of Correction Branch - ST (ation 7590 - Tel. No. (703) 305-8	(South Tower) 9A22
read as sh		recting Office and/or Applicant's errors, should the patent No new matter should be introduced, nor should the scope or
Thank Yo	ou For Your Assistance	Certificates of Correction Branch
•	est for issuing the above-iden ision on the appropriated box.	tified correction(s) is hereby:
\boxtimes	Approved	All changes apply.
	Approved in Part	Specify below which changes do not apply.
	Denied	State the reasons for denial below.
Commen	ts:	
		/Hosain T Alam/ Supervisory Patent Examiner, Art Unit 2166





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

WEISS & MOY PC 4204 NORTH BROWN AVENUE SCOTTSDALE AZ 85251 MAILED
NOV 0 7 2011
OFFICE OF PETITIONS

In re Application of

Kenneth Osgood

Application No. 11/462,791

Filed: August 7, 2006

Attorney Docket No. 4483P3100

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 18, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to properly reply in a timely manner to the final Office action mailed, March 2, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 3, 2010. A Notice of Abandonment was mailed on September 28, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a RCE (Request for Continued Examination, with the required fee of \$465, (2) the petition fee of \$930, and (3) a proper statement of unintentional delay. Accordingly, the RCE is accepted as being unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 3626 for appropriate action by the Examiner in the normal course of business on the reply received October 18, 2011.

/Kimberly Inabinet/ Kimberly Inabinet Petitions Examiner Office of Petitions



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

				•	
APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
11/462,803	08/07/2006	Wendell B. Colson	1586/US/4	5922	
20686 DORSEY & V	7590 09/09/2010 VHITNEY, LLP		EXAM	INER	
INTELLECTU	DORSEY & WHITNEY, LLP INTELLECTUAL PROPERTY DEPARTMENT		VANATTA, AMY B		
370 SEVENTI SUITE 4700	EENTH STREET		ART UNIT	PAPER NUMBER	
DENVER, CC	80202-5647		3765		
			<u></u>		
		·	NOTIFICATION DATE	DELIVERY MODE	
		•	09/09/2010	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing-dv@dorsey.com docketingDV@dorsey.foundationip.com



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 2023
WWW.USDIO.000

DORSEY & WHITNEY, LLP INTELLECTUAL PROPERTY DEPARTMENT 370 Seventeenth Street Suite 4700 Denver, CO 80202-5647

Art Unit 3765

In re Application of

Wendell B. Colson et al.

Serial No. 11/462,803

Filed August 7, 2006

For: BEAM WINDING APPARATUS WITH

BEAM SWITCHING TURNTABLE

DECISION ON PETITION

In the petition under 37 CFR 1.324 filed March 17, 2010, applicant request that Kevin M. Dann be added as inventor of the above named invention.

Regarding the petition under 37 CFR 1.324, the following is required per 37 CFR 1.324:

- (b)(1) A statement from each person who is being added as an inventor that the inventorship error occurred without any deceptive intention on his or her part;
 - (b)(2) A statement from the current named inventors who have not submitted a statement under paragraph (b)(1) of this section either agreeing to the change of inventorship or stating that they have no disagreement in regard to the requested change;
 - (b)(3) A statement from all assignees of the parties submitting a statement under paragraphs (b)(1) and (b)(2) of this section agreeing to the change of inventorship in the patent, which statement must comply with the requirements of $\S 3.73(b)$ of this chapter; and
 - (b)(4) The fee set forth in $\S 1.20(b)$

All requirements set forth in 37 CFR 1.324, as noted above, have been met by applicants' petition.

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 2023
www.usdio.gov

The petition is granted.

The correct inventive entity for this application is: Wendell B. Colson, David P. Hartman and Kevin M. Dann

PETITION GRANTED

Gary / Welch

Supervisory Patent Examiner

Art Unit 3765 (571) 272-4996

(571) 273-4996 fax



COMMISSIONER FOR PATENTS UNITED STATES PATENT AND TRADEMARK OFFICE P.O. BOX 1450 ALEXANDRIA, VA 22313-1450 www.usplo.gov

DATE:

September 7, 2010

TO:

Certificates of Correction Branch

FROM:

Gary L. Welch

SPE, Art Unit 3765

SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 7,178,211 as specified on the attached Certificate.

Gary L. Welch, SPE

Art Undt 3765

CERTIFICATE

Patent No. 7,178,211

Patented: 20 February 2007

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Wendell B. Colson, Weston, Massachusetts

David P. Hartman, Framingham, Massachusetts

Kevin M. Dann, Englewood, Colorado

Gary L. Welch

Supervisory Patent Examiner

Art Unit 3765



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

PAUL W. MARTIN NCR CORPORATION, LAW DEPT. 3097 SATELLITE BLVD., 2nd FLOOR DULUTH GA 30096

MAILED

APR 08 2011 OFFICE OF PETITIONS

In re Application of

Cheryl K. Harkins et al.

Application No. 11/462,857

Filed: August 07, 2006

Attorney Docket No. 12574.00

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 28, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, July 07, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 08, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$1620, and (3) an adequate statement of unintentional delay. Accordingly, the reply to the non-final Office action of July 07, 2010 is accepted as being unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to Technology Center AU 2887 for appropriate action on the concurrently filed amendment.

Ramesh Krishnamurthy Petitions Examiner Office of Petitions

Doc Code: PET.AUTO Document Description: Petition autom	natically granted by EFS-Web	PTO/SB/64 U.S. Patent and Trademark Office Department of Commerce
Electronic Petition Request	PETITION FOR REVIVAL OF AN APPLICATION UNINTENTIONALLY UNDER 37 CFR 1.137(b)	FOR PATENT ABANDONED
Application Number	11462857	
Filing Date	07-Aug-2006	
First Named Inventor	Cheryl Harkins	
Art Unit	2887	
Examiner Name	KARL FRECH	
Attorney Docket Number	12574.00	
Title	METHODS AND APPARATUS FOR ESTABLIS LABEL INFORMATION	SHING AND MAINTAINING ELECTRONIC SHELF
United States Patent and Trademark	ame abandoned for failure to file a timely an Office. The date of abandonment is the day a is any extensions of time actually obtained.	
NOTE: A grantable petition requires t (1) Petition fee; (2) Reply and/or issue fee; (3) Terminal disclaimer with discall design applications; (4) Statement that the entire design applications	claimer fee – required for all utility and plant	applications filed before June 8, 1995; and for
Petition fee The petition fee under 37CFR 1.17(m) i	s attached.	
Applicant claims SMALL ENTI	TY status. See 37 CFR 1.27.	
Applicant is no longer claimi	ng SMALL ENTITY status. See 37 CFR 1.27(g)	(2).
Applicant(s) status remains a	as SMALL ENTITY.	
Applicant(s) status remains a	as other than SMALL ENTITY.	
Issue Fee and Publication Fee:		
Issue Fee and Publication Fee must acc	company ePetition.	
Issue Fee Transmittal is attached	d	
Drawing corrections and/ or other d	eficiencies.	

•	Drawing corrections and/ or oth	ner deficiencies are not required	
0	I certify, in accordance with 37 (on	CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed	
0	Drawing corrections and/ or oth	ner deficiencies are attached.	
	STATEMENT: The entire delay in grantable petition under 37 CFR	filing the required reply from the due date for the required reply until the filing of a 1.137(b) was unintentional.	
T⊦	IIS PORTION MUST BE COMPLETE	D BY THE SIGNATORY OR SIGNATORIES	
lo	ertify, in accordance with 37 CFR	1.4(d)(4) that I am:	
•	An attorney or agent registered in this application.	d to practice before the Patent and Trademark Office who has been given power of attorney	
0	An attorney or agent registered	to practice before the Patent and Trademark Office, acting in a representative capacity.	
0	A sole inventor		
0	A joint inventor; I certify that I a	am authorized to sign this submission on behalf of all of the inventors.	
0	A joint inventor; all of whom ar	e signing this e-petition.	
0	The assignee of record of the e	entire interest that has properly made itself of record pursuant to 37 CFR 3.71.	
Sig	gnature	/Paul W. Martin, Reg. # 34,870/	
Na	ame	Paul W. Martin	
Re	Registration Number 34870		



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Decision Date: October 14,2011

In re Application of : DECISION ON PETITION

Charal Markins

UNDER CFR 1.137(b)

Cheryl Harkins

Application No : 11462857
Filed : 07-Aug-2006

Attorney Docket No: 12574.00

This is an electronic decision on the petition under 37 CFR 1.137(b), filed October 14,2011 , to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Allowance and Issue Fee(s) Due. The date of abandonment is the day after the expiration date of the period set for reply in the Notice.

The electronic petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue Fee and the Publication Fee (if necessary); (2) the petition fee as set forth in 37 CFR 1.17 (m); (3) the drawing correction and/or other deficiencies (if necessary); and (4) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being directed to the Office of Data Management.

Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BANNER & WITICOFF, LTD ATTORNEYS FOR CLIENT NUMBER 006591 10 SOUTH WACKER DR. SUITE 3000 CHICAGO IL 60606

MAILED

JUN 06 2011

In re Application of : OFFICE OF PETITIONS

Frank P. Palmer

Application No. 11/462,892 : DECISION ON PETITION

Filed: August 7, 2006

Attorney Docket No. 006591.00036

This is a decision on the petition, filed April 11, 2011, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to timely pay the issue and publication fees on or before February 14, 2011, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed November 12, 2010. A Notice of Abandonment was mailed February 25, 2011.

Petitioner asserts that the Notice dated November 12, 2010 was not received.

A review of the written record indicates no irregularity in the mailing of the Notice and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received.

The showing required to establish nonreceipt of an Office communication must include:

- (1) a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
- (2) Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received.
- (3) A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. See MPEP §711.03(c)(I)(A).

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy item (3) of the above-stated requirements. The master docket submitted does not show all replies docketed for a date three months from the mail date of Notice of November 12, 2010.

Accordingly, absent the required evidence to establish nonreceipt of the Notice of November 12, 2010, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$1,620 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was

discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

By facsimile:

(571) 273-8300

Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

/ Ramesh Krishnamurthy/
Ramesh Krishnamurthy

Petitions Examiner

Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BANNER & WITICOFF, LTD ATTORNEYS FOR CLIENT NUMBER 006591 10 SOUTH WACKER DR. SUITE 3000 CHICAGO IL 60606

MAILED

JUL 1 2 2011

OFFICE OF PETITIONS

In re Application of

Frank P. Palmer

Application No. 11/462,892

Filed: August 7, 2006

Attorney Docket No. 006591.00036

DECISION ON PETITION

This is a decision on the renewed petition, filed June 24, 2011, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely pay the issue and publication fees on or before February 14, 2011, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed November 12, 2010. A Notice of Abandonment was mailed February 25, 2011.

Petitioner asserts that the Notice dated November 12, 2010 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received.

The showing required to establish nonreceipt of an Office communication must include:

(1) a statement from the practitioner describing the system used for recording an Notice received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

- (2) Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received.
- (3) A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. See MPEP §711.03(c)(I)(A).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby <u>vacated</u> and the holding of abandonment <u>withdrawn</u>.

This application is being referred to the Technology Center technical support staff of Art Unit 3694 for re-mailing the Notice of Allowability of November 10, 2010. The period for reply will run from the mailing date of the Notice of Allowability.

/Thurman K. Page/ Thurman Page Petitions Examiner Office of Petitions



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/03/2010

KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614

Applicant : Andrew H. Cragg

Patent Number: 7641657 Issue Date : 01/05/2010

Application No: 11/462,934 Filed : 08/07/2006 : DECISION ON REQUEST FOR : RECALCULATION of PATENT

: TERM ADJUSTMENT IN VIEW : OF WYETH AND NOTICE OF INTENT TO

: ISSUE CERTIFICATE OF CORRECTION

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 27 days. The USPTO will sua sponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Decision Date: July 15,2011

In re Application of : DECISION ON REQUEST TO WITHDRAW AS

Hugh Svendsen ATTORNEY/AGENTOF RECORD

Application No : 11463157
Filed : 08-Aug-2006

Attorney Docket No: 1116-011

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR§ 1.36(b), filed July 15,2011

The request is **APPROVED**

The request was signed by /R. Chad Bevins/ (registration no. 51468) on behalf of all attorneys/agents associated with Customer Number 71739 . All attorneys/agents associated with Customer Number 71739 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with Customer number 15990

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions

Doc Code: PET.AUTO Document Description: Petitio	n automatically granted by EFS-Web	PTO/SB/83 U.S. Patent and Trademark Office Department of Commerce	
Electronic Petition Request REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS		RNEY OR AGENT AND CHANGE OF	
Application Number	11463157		
Filing Date	08-Aug-2006	08-Aug-2006	
First Named Inventor	Hugh Svendsen		
Art Unit	2453		
Examiner Name	RANDY SCOTT		
Attorney Docket Number	1116-011		
Title	HEAVY INFLUENCER MEDIA RECOMMEN	DATIONS	
The reason(s) for this request a 10.40(c)(5) Certifications	re those described in 37 CFR:		
	le notice to the client, prior to the expiration of t	he response period, that the practitioner(s)	
mena to wandaw nome	e client or a duly authorized representative of the	e client all papers and property (including funds)	
☑ I/We have notified the clie	ent of any responses that may be due and the tim	ne frame within which the client must respond	
	dress and direct all future correspondence to: ed inventor or assignee that has properly made i tomer Number:	itself of record pursuant to 15990	
I am authorized to sign on behal	f of myself and all withdrawing practitioners.		
Signature	/R. Chad Bevins/		
Name	/R. Chad Bevins/		
Registration Number 51468			

Commissioner for Patents United States Patent and Trademark Office P. O. Box 1450 Alexandria, VA 22313-1450

LEE & HAYES, PLLC 601 W. RIVERSIDE AVENUE SUITE 1400 SPOKANE WA 99201 MAILED

OCT 1 4 2010

OFFICE OF PETITIONS

In re Application of Andrew D. Wilson et al Application No. 11/463,183 Filed: August 8, 2006

ON PETITION

Attorney Docket No. MS1-3105US

This is a decision on the petition, filed October 12, 2010 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on September 23, 2010 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries should be directed to Karen Creasy at (571) 272-3208.

This matter is being referred to Technology Center AU 2629 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Karen Creasy/ Karen Creasy Petitions Examiner Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

Doc Code: PET.PTA.RCAL

Document Description: Request for Recalculation in view of Wyeth

Approved for use through 02/28/2011. OMB 0651-0020

U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH*

Attorney Docket Number: TI-34484A Patent Number: 7,669,109

Filing Date (or 371(b) or (f) Date): 08-08-2006 Issue Date: 02/23/2010

First Named

Inventor: Dale E. Hocevar

Title: HARDWARE-EFFICIENT LOW DENSITY PARITY CHECK CODE FOR DIGITAL COMMUNICATIONS

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature / Wade J. Brady III /	Date August 12, 2010
Name (Print/Typed) Wade J. Brady III	Registration Number 32,080

Note: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*

~	*Total of1	forms are submitted
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The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/17/2010

TEXAS INSTRUMENTS INCORPORATED P O BOX 655474, M/S 3999 DALLAS, TX 75265

Applicant : Dale E. Hocevar

Patent Number: 7669109 Issue Date : 02/23/2010

Application No: 11/463,236 Filed : 08/08/2006 : RECALCULATION of PATENT : TERM ADJUSTMENT IN VIEW

: DECISION ON REQUEST FOR

: OF WYETH AND NOTICE OF INTENT TO : ISSUE CERTIFICATE OF CORRECTION

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 131 days. The USPTO will sua sponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

GORDON & JACOBSON, P.C. 60 LONG RIDGE ROAD SUITE 407 STAMFORD CT 06902

MAILED
FEB 0 1 2012
OFFICE OF PETITIONS

In re Application of

Stephen P. Cooke et al

Application No. 11/463,240

Filed: August 8, 2006

Attorney Docket No. SAB-031 / 51986-3

DECISION GRANTING PETITION

UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 31, 2012, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 30, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.¹

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2468 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

/Karen Creasy/ Karen Creasy Petitions Examiner Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.



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TEXAS INSTRUMENTS INCORPORATED P O BOX 655474, M/S 3999 DALLAS TX 75265

MAILED

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OFFICE OF PETITIONS

In re Application of

Gregory R. CONTI

Application No. 11/463,426

Filed: August 09, 2006

Attorney Docket No. TI-38800

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 11, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, September 25, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 26, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$1,620.00, and (3) a proper statement of unintentional delay. Accordingly, the reply to the Office action of September 25,, 2009 is accepted as having been unintentionally delayed.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-4231.

This application is being referred to Technology Center AU 2434 for appropriate action by the Examiner in the normal course of business on the reply received.

Michelle R. Eason

Paralegal Specialist

Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

APEX JURIS, PLLC 12733 LAKE CITY WAY NORTHEAST SEATTLE WA 98125

MAILED

MAR 2 2 2011

PCT LEGAL ADMINISTRATION

In re Application of: OKAMOTO, et al.

U.S. Application No.: 11/463,467 PCT No.: PCT/JP2005/001669

International Filing Date: 04 February 2005

Priority Date: 09 February 2004

Attorney's Docket No.: 06.55.01.USP

ALIGNER AND SEMICONDUCTOR For: DEVICE MANUFACTURING METHOD

USING THE ALIGNER

DECISION

This decision is issued in response to applicant's petition under 37 CFR 1.182 filed 27 August 2010, treated herein as a petition to have the present application treated as a U.S. national stage application filed under 35 U.S.C. 371. The petition under 37 CFR 1.182 is **DISMISSED** as moot. The request is being considered under 37 CFR 1.181. Therefore no petition fee is due and the petition fee paid will be refunded.

BACKGROUND

On 04 February 2005, applicant filed international application PCT/JP2005/001669. The international application claimed an earlier priority date of 09 February 2004, and it designated the United States. On 18 August 2005, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office ("USPTO"). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 09 August 2006.

On 09 August 2006, applicants initiated the present application by electronically filing a transmittal letter and accompanying materials, including the basic national fee. During the electronic filing process applicant's selected the "Utility" radio button. The application was processed by the USPTO as a filing under 35 U.S.C. 111(a).

On 05 September 2006 the USPTO issued a "Notice To File Missing Parts Of Nonprovisional Application Filed Under 37 CFR 1.53(b)."

On 26 January 2007, applicant was mailed an updated filing receipt.

On 27 August 2010, applicants filed the petition considered herein. The petition requests that the present application be treated as a national stage application filed under 35 U.S.C. 371.

DISCUSSION

A review of the history of the USPTO EFS-Web electronic filing system finds that the EFS-Web screen changed on 16 December 2006. Prior to that date the radio button for utility only said "Utility." Starting on 16 December 2006 the radio button was changed to read "Utility (Utility under 35 USC 111(a))." Therefore, the USPTO has taken the position that use of the utility button in and of itself is not considered a conflicting instruction if all the other papers filed indicate a filing under 35 USC 371. An examination of the papers filed 09 August 2006 does not show any indication that the application was intended as anything other than the U.S. National stage entry of international application PCT/JP2005/001669. Therefore, the application should have been processed as a 35 USC 371 application.

CONCLUSION

The petition under 37 CFR 1.182 is **DISMISSED** as moot. The \$400.00 petition fee paid on 27 August 2010 will be refunded.

Pursuant to 37 CFR1.181, applicant's present petition is granted to the extent that the present application will be treated a national stage, filed under 35 U.S.C. 371, of international application of PCT/JP2005/001669.

This application is being referred to the National Stage Processing Branch of the International Division for further processing in accordance with this decision; including if proper the mailing of a "Notice Of Acceptance" (Form PCT/DO/EO/903).

Derek A. Putonen Attorney-Advisor

Office of PCT Legal Administration

Tel.: 571-272-3294

Wh aft





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

McCarthy Tetrault LLP Box 48 Suite #4700 Toronto Dominion Bank Tower TORONTO ON M5K 1E6 CA CANADA MAILED
AUG 1 6 2010
OFFICE OF PETITIONS

In re Patent No. 7,639,353

Rooke

Issue Date: December 29, 2009

Application No. 11/463,495

Filed: August 9, 2006

Attorney Docket No. T-1300-41US-184607:

378736

DECISION FOR REQUEST FOR RECONSIDERATION

OF PATENT TERM ADJUSTMENT

This is a decision on the "Request for Reconsideration of Patent Term Calculation under 35 U.S.C. 154(b) and 37 CFR 1.322(a)(4)," filed May 20, 2010. Patentees request that the patent term adjustment indicated on the face of the Letters of Patent be corrected from zero (0) days to ninety-three (93) days or forty-six (46) days.

The request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

On December 29, 2009, the above-identified application matured into U.S. Patent No. 7,639,353, with a revised patent term of 0 days. A Request for Recalculation of Patent Term Adjustment in View of Wyeth was filed on April 19, 2010. A decision was mailed on April 23, 2010, indicating that the patent term adjustment had been determined to be zero (0) days. The instant request for reconsideration filed May 20, 2010, was timely filed within one month of the date the petition recalculation decision was mailed.

Patentee asserts that the "B" delay period is 115 days. Patentee's argument is not persuasive. A review of the file history reveals that a Request for Continued Examination was filed on June 9, 2009. The filing of the Request for Continued Examination cut-off the ability to accumulate any adjustment for over three year delay, or "B" delay. The subject patent is not entitled to any adjustment for over three year delay because the Request for Continued Examination was filed before the date that is three years after the application was filed under 35 U.S.C. 111. No adjustment will be entered accordingly.

Relative to the amendment under 37 CFR 1.312 filed October 16, 2009, a review of the file history reveals that the adjustment under 37 CFR 1.704(c)(10) should be 46 days, not 75 days. 37 CFR 1.704(c)(10) provides:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in

which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

- (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under
- § 1.312 or such other paper;

or

(ii) Four months;

In this instance, it is undisputed that patentee filed the amendment under 37 CFR 1.312 was filed after the mailing of the notice of allowance. It is noted that the period of reduction to the patent term adjustment for the filing of the amendment under 37 CFR 1.312 is 46 days, beginning on the date the amendment was filed, October 16, 2009, ending on the date the response to the amendment was mailed, November 30, 2009. Accordingly, the period of reduction of 75 days will be removed and a period of 46 days entered.

No consideration will be given to patentees' assertion that 9 days of adjustment to the patent term should be removed because the Information Disclosure Statement filed August 8, 2008, contained a statement under 37 CFR 1.704(d). Further to this point, PALM records indicate that the issue fee payment was received in the Office on October 16, 2009. An application for patent term adjustment preceded the payment of the issue fee, yet patentees failed to raise the issue of 9 days of adjustment therein. The period for filing an application for patent term adjustment requesting reconsideration of the initial determination of patent term adjustment at the time of mailing of the notice of allowance ended October 16, 2009. Accordingly, relative to the9 days of reduction to the patent term adjustment entered prior to the issuance of the patent, it is appropriate to dismiss this petition as untimely filed under § 1.705(b).

In view thereof, the patent term adjustment of 0 days indicated in the patent is correct.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Further correspondence with respect to this decision should be addressed as follows:

By Mail: Mail Stop Petition

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

By FAX:

(571) 273-8300

ATTN: Office of Petitions

By Hand:

Customer Service Window

Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051

MAILED

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OFFICE OF PETITIONS

In re Application of

Springs et al.

Application No. 11/463,542

Filed: August 9, 2006

Attorney Docket No. 007539.00446

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 28, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed October 10, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 11, 2009. A Notice of Abandonment was mailed June 2, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application, (2) the petition fee of \$810, and (3) a proper statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See <u>In re Application of S.</u>, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$555 extension of time fee submitted with the petition on October 28, 2010, was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's credit card account.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application number 12/418,074.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

Alicia Kelley Petitions Examiner Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Da		Ma.	
ra	per	No.:	

DATE

٠,٠

: 1-22-11

TO SPE OF

: ART UNIT **3673**

SUBJECT

: Request for Certificate of Correction for Appl. No.: 11463554 Patent No.: 7775564

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (C of C) Randolph Square – 9D10-E Palm Location 7580

> Omega Lewis Certificates of Correction Branch

703-756-1575

Thank You For Your Assistance

Illalik I Ou	101 Tour Assistance	
	t for issuing the above-ide on the appropriate box.	entified correction(s) is hereby:
xApproved		All changes apply.
	Approved in Part	Specify below which changes do not apply.
	Denied .	State the reasons for denial below.
Comments:		
<u>.</u>		
		· · · · · · · · · · · · · · · · · · ·
		/Peter M. Cuomo/

DATE	:January 27, 2010	
TO SPE OF SUBJECT	: ART UNIT 3612 : Request for Certificate of Correction for Appl. No.: 184813761/Patent no. 7625021	
Please resp ithin 7 days.	ond to this request for a ce	rtificate of correction w
FOR IFW FI	ILES:	
the IFW app	ew the requested changes/o dication image. No new ma the claims be changed.	corrections as shown in the COCIN document(s) in atter should be introduced, nor should the scope or
	plete the response (see belnent code COCX.	ow) and forward the completed response to scanning
FOR PAPE	R FILES:	
Please revie	ew the requested changes/o Please complete this form (orrections as shown in the attached certificate of see below) and forward it with the file to:
Rand	ficates of Correction Bran olph Square – 9D10-A Location 7580	ch (CofC)
		Magdalene Talley
		Certificates of Correction Branch
	·	571-272-0423
Thank You	For Your Assistance	
The request	on the appropriate box.	entified correction(s) is hereby:
	Approved	All changes apply.
Ø	Approved in Part	Specify below which changes do not apply.
Ø.	Approved in Part Denied	Specify below which changes do not apply. State the reasons for denial below.
	Denied	
Ø.	Denied	
	Denied	



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

FENNEMORE CRAIG 3003 NORTH CENTRAL AVENUE **SUITE 2600** PHOENIX, AZ 85012

MAILED OCT 05 2011 OFFICE OF PETITIONS

In re Application of Richard C. Pluta, et al. Application No. 11/463,883 Filed: August 10, 2006

Attorney Docket No.: 53078.670

ON PETITION

This is a decision in response to the petition, filed September 23, 2011, to revive the aboveidentified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to a non-final Office action mailed February 11, 2011, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on May 12, 2011. This decision precedes the mailing of a Notice of Abandonment. On September 23, 2011, the present petition was filed.

The petition is not signed by an attorney or agent of record. However, in accordance with 37 CFR 1.34(a), the signature Christopher G. Hayden appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. A courtesy copy of this decision is being mailed to petitioner. However, if Mr. Hayden desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. All future correspondence regarding this application file will be directed solely to the address of record.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of amendment; (2) the petition fee of \$1,620; and (3) an adequate statement of unintentional delay¹.

Extensions of time under 37 CFR 1.136 are available only if asked for prior to or with the response. In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for

¹ 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While the statement is not made by an attorney of record, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

response has expired. Since, no extension of time fees are due on a petition for revival, the \$1,110 extension fees included with this petition are being refunded to counsel's deposit account.

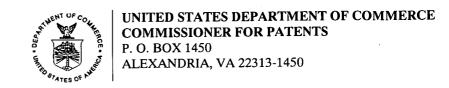
The application is being referred to Technology Center AU 1762 for appropriate action by the Examiner in the normal course of business on the reply received September 23, 2011.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

/SDB/

Sherry D. Brinkley Petitions Examiner Office of Petitions

cc: CHRISTOPHER G. HAYDEN
2212 MT VERNON AVE, SUITE 5
ALEXANDRIA, VA 22301



Date

: 5/24/2011

Patent No.

: 7,413,256 B2

Serial No.

: 11/463,962

Inventor(s)

: Hall et al.

Issue Date

: August 19, 2008

Title

: WASHER FOR A DEGRADATION ASSEMBLY

Doc./File No.

: 85.0088 14

Re: Consideration for Certificate of Correction

Consideration has been given your request for a certificate of correction, for the above-identified patent under the provisions of Rule 1.322.

Respecting the alleged error(s) in your request, your request is unclear, patent number 4,465,221 is/are printed in accordance with the record and presented to Acharya, it is also assigned to Schimdt. Please be more clearer of what the request is, otherwise, no correction is in order here under Rule 1.322 or 1.323.

In view of the foregoing, your request is hereby denied.

Further consideration will be given concerning this matter upon receipt of a request for **Reconsideration** (reconsideration should be accompanied by supporting document(s) such as, amendment, postcard receipt, 1449/892, etc.) and should be filed and directed to Decisions & Certificates of Correction Branch.

Ernest C. White, *LIE* (571) 572-3385 Mary F. Diggs, *Supervisor* (703) 756-1580 Decisions & Certificates of Correction Branch ernest.white@uspto.gov

Holme Roberts & Owen LLP-Client-1 1700 Lincoln Street, Suite 4100 Denver CO 80203

ECW



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

FISH & RICHARDSON P.C. (BO) P.O. BOX 1022 MINNEAPOLIS MN 55440-1022

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JAN 2 0 2011

OFFICE OF PETITIONS

In re Application of Manfred Blattner et al Application No. 11/464,000 Filed: August 11, 2006

DECISION GRANTING PETITION UNDER 37 CFR 1.313(c)(2)

Attorney Docket No. 15540-090001/28308;

18.

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 19, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on January 3, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.1

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 1713 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

/Karen Creasy/ Karen Creasy Petitions Examiner Office of Petitions

le undersit

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B - Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.



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UNITED STATES PATENT AND TRADEMARK OFFICE
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TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO CA 94111-3834

OFFICE OF PETITIONS

In re Patent No. 7,615,569 : DECISION ON REQUEST

Fulp et al. : FOR

Issue Date: November 10, 2009: RECONSIDERATION OF

Application No. 11/464,057 : PATENT TERM ADJUSTMENT

Filed: August 11, 2006 : and

Atty Docket No. 018512- : NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION

This is a decision on the petition filed on January 5, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by three hundred and fifty-five (355) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by three hundred and sixty-four (364) days is **GRANTED to the extent indicated** herein.

Petitioner has indicated that this patent is not subject to a terminal disclaimer. 1

Applicant disputes the 78-day reduction pursuant to 37 C.F.R. § 1.704(c)(10), which states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

¹ Petition, page 5.

Submission of an amendment under \S 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in \S 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under \$ 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under \$ 1.312 or such other paper; or (ii) Four months...

A notice of allowance was mailed on June 16, 2009. Replacement drawings were filed on August 25, 2009, a Rule 1.312 amendment was subsequently received on September 15, 2009, and a response to the Rule 1.312 amendment was mailed on September 25, 2009. The patent issued on November 10, 2009, which is 78 days after the submission of the replacement drawings. This constitutes 78 days of delay, pursuant to 37 C.F.R § 1.704(c)(10).²

As such, the patent term adjustment is increased by 364 (351 examination delay + 91 B delay - 78 applicant delay) days.

The Office acknowledges submission of the \$200.00 fee. No additional fees are required.

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, Patentee is given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **three** hundred and sixty-four (364) days.

² The PAIR calculations break down these 78 days into two separate periods: 67 days and 11 days, since the 11-day period between the filing of the Rule 1.312 amendment and the response to the same overlaps with the 78-day period between the filing of the replacement drawings and the date of issuance.

Patent No. 7,615,569

Application No. 11/464,057

Page 3

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

Anthony Knight

Director

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

7,615,569 B2

DATED

November 10, 2009

DRAFT

INVENTOR(S):

Fulp et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 273 days

Delete the phrase "by 273 days" and insert – by 364 days--



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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

RENNER OTTO BOISSELLE & SKLAR, LLP 1621 EUCLID AVENUE NINETEENTH FLOOR CLEVELAND, OH 44115

MAILED

AUG 1 6 2010

OFFICE OF PETITIONS

In re Application of

Filed: August 14, 2006

Manuel P. Pinto
Application No. 11/464,282

DECISION ON PETITION TO WITHDRAW

FROM RECORD

Attorney Docket No. PINT.P101USA

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 30, 2010.

The request is **NOT APPROVED**.

The Office strongly encourages practitioner(s) requesting withdrawal from representation as practitioner of record in an application to review the record to determine whether he or she is, in fact, of record and how he or she was made of record. For example, the practitioner(s) should determine whether he or she was appointed by naming each practitioner individually or through the use of a Customer Number.

In the instant application, the practitioner(s) were appointed via Customer Number however the request does not designate a Customer Number to be withdrawn by. Therefore, the current request cannot be approved at this time. Any subsequent request must withdraw all associated practitioner(s) in the same manner as appointed.

All future communications from the Office will continue to be directed to the above-listed address until properly notified.

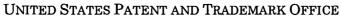
There is an outstanding Final Office action mailed May 20, 2010, that requires a reply.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6059.

Alicia Kelley

Petitions Examiner

Office of Petitions





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED

RENNER OTTO BOISSELLE & SKLAR, LLP **1621 EUCLID AVENUE** NINETEENTH FLOOR **CLEVELAND OH 44115**

SEP 1 7 2010

OFFICE OF PETITIONS

In re Application of

Manuel P. Pinto

Application No. 11/464,282

Filed: August 14, 2006

Attorney Docket No. PINT.P101USA

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 25, 2010.

The request is APPROVED.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office will require the practitioner(s) to certify that he, she or they have: (1) given reasonable notice to the client, prior to the expiration of the reply period, which the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any replies that may be due and the time frame within which the client must respond, pursuant to 37 CFR 10.40 (c).

The request was signed by Warren A. Sklar, on behalf of the practitioners of record associated with Customer No 23908.

Customer No 23908 has been withdrawn as from record. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There is an outstanding Office action mailed May 20, 2010 that requires a reply from the applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6059. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Alicia Kelley Petitions Examiner

Office of Petitions

cc:

MANUEL PINTO **60 LINDA COURT** DANVILLE, CA 94526



23908

United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandra, Virginia 22313-1450 www.unpto.gov

APPLICATION NUMBER

FILING OR 371(C) DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

11/464,282

08/14/2006

Manuel P. Pinto

PINT.P101USA
CONFIRMATION NO. 8377

POWER OF ATTORNEY NOTICE

Date Mailed: 09/16/2010

1621 EUCLID AVENUE NINETEENTH FLOOR CLEVELAND, OH 44115

RENNER OTTO BOISSELLE & SKLAR, LLP

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/25/2010.

• The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

	/atkelley/								
				<u>.</u>					
Office of Data	Management	Application	Assistance	Unit (571) 27	72-4000	or (571) 27:	2-4200	or 1-888-7	786-0101

		SE FOR CERTIFICATE OF CORRECTION Paper No.:
DATE	05/24//11	•
TO SPE OF	: ART UNIT 1623	
SUBJECT	: Request for Certificate of C	Correction for Appl. No.: <u>11/464.338</u> Patent No.: <u>7666848B2</u>
		CofC mailroom date: 05/17/11
Please respo	ond to this request for a	a certificate of correction within 7 days.
FOR IFW FI	LES:	
IFW applicat		es/corrections as shown in the COCIN document(s) in the atter should be introduced, nor should the scope or
	plete the response (see nent code COCX.	e below) and forward the completed response to scanning
FOR PAPER	R FILES:	
		es/corrections as shown in the attached certificate of rm (see below) and forward it with the file to:
Dond	alah Causas OD40 A	
	olph Square – 9D10-A Location 7580	RoChaun Johnson
	•	RoChaun Johnson Certificates of Correction Branch
Palm	Location 7580	RoChaun Johnson
Palm Thank You The reques	Location 7580 For Your Assistance	RoChaun Johnson Certificates of Correction Branch
Palm Thank You The request	Location 7580 For Your Assistance t for issuing the above	RoChaun Johnson Certificates of Correction Branch 703-756-1580
Palm Thank You The reques Note your decision XXX	For Your Assistance t for issuing the above on the appropriate box.	RoChaun Johnson Certificates of Correction Branch 703-756-1580 e-identified correction(s) is hereby:
Palm Thank You The request Note your decision XXX	For Your Assistance t for issuing the above on the appropriate box. Approved Approved in Part Denied	RoChaun Johnson Certificates of Correction Branch 703-756-1580 e-identified correction(s) is hereby: All changes apply. Specify below which changes do not apply. State the reasons for denial below.
Palm Thank You The request Note your decision XXX	For Your Assistance t for issuing the above on the appropriate box. Approved Approved in Part Denied	RoChaun Johnson Certificates of Correction Branch 703-756-1580 e-identified correction(s) is hereby: All changes apply. Specify below which changes do not apply. State the reasons for denial below. as been approved.
Palm Thank You The request Note your decision XXX	For Your Assistance t for issuing the above on the appropriate box. Approved Approved in Part Denied The C of C ha	RoChaun Johnson Certificates of Correction Branch 703-756-1580 e-identified correction(s) is hereby: All changes apply. Specify below which changes do not apply. State the reasons for denial below. as been approved.
Thank You The request Note your decision XXX	For Your Assistance t for issuing the above on the appropriate box. Approved Approved in Part Denied The C of C ha	RoChaun Johnson Certificates of Correction Branch 703-756-1580 e-identified correction(s) is hereby: All changes apply. Specify below which changes do not apply. State the reasons for denial below. as been approved.
Thank You The request Note your decision XXX	For Your Assistance t for issuing the above on the appropriate box. Approved Approved in Part Denied The C of C ha	RoChaun Johnson Certificates of Correction Branch 703-756-1580 e-identified correction(s) is hereby: All changes apply. Specify below which changes do not apply. State the reasons for denial below. as been approved.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE	:05/24//11
TO SPE OF	: ART UNIT 1623
SUBJECT	: Request for Certificate of Correction for Appl. No.: 11/464.338 Patent No.: 7666848B2
	CofC mailroom date: 05/17/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the COCIN document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code COCX.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC) Randolph Square - 9D10-A Palm Location 7580

RoChaun Johnson

Certificates of Correction Branch

703-756-1580

Thank You For Your Assistance						
The request for issuing the above-identified correction(s) is hereby: Note your decision on the appropriate box.						
ххж	Approved	All changes apply.				
0	Approved in Part	Specify below which changes do not app				
	Denied The Conf. Cohor have	State the reasons for denial	l below.			
Comments:	The C of C has been	approved.				
	/s.	A. Jiang/	1623			
		SPF	Art Unit			



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NOV 02 2010

OFFICE OF PETITIONS

K&L Gates LLP P.O. Box 1135 CHICAGO IL 60690

In re Application of RODGERS et al.

Application No. 11/464,347

Filed: 08/14/2006

Atty Docket No. 3718611-03492 :

REQUEST FOR RECONSIDERATION

OF PATENT TERM ADJUSTMENT

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)" filed August 4, 2010. Applicants request that the patent term adjustment (PTA) for the above-identified patent be set at 271 days, or in the alternative, 315 days.

Applicants state that they believe that the total PTA calculation of 317 days is overstated as of the second allowance mailed May 7, 2010. Applicants aver that they should be assessed a reduction of the PTA pursuant to 37 CFR 1.704(c)(10) for the filing of a petition to withdraw from issue, a RCE and an IDS on February 21, 2008, after the mailing of the notice of allowance and payment of the issue fee.

The application for patent term adjustment under 37 CFR 1.705(b) is dismissed as premature.

The Office notes that the computer will not calculate any further Office delay under 37 CFR 1.702(a)(4) or applicant delay under 37 CFR 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Section 2734 of the Manual for Examining Procedure states:

Since the Office is obligated to provide a determination of patent term adjustment under 35 U.S.C. 154(b) in the notice of allowance (i.e., before the actual patent issue date), the Office must project (or estimate) the actual patent issue date and base its patent term adjustment determination on that projection. Additionally, there are a number of papers which if submitted by an applicant after the mailing of the notice of allowance will result in a reduction of any patent term adjustment, and there may be Office delays occurring after mailing the notice of allowance resulting in an increase in the amount of patent term adjustment. Thus, 37 CFR 1.705(d) provides for a revision of the patent term adjustment when revision is necessitated by events occurring after the mailing of the notice of allowance. 37 CFR 1.705(d) specifically provides that if there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. 37 CFR 1.705(d) also provides that if the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of 37 CFR 1.705(b). The two month period is not extendable. 37 CFR 1.705(e).

Emphasis added.

Therefore, any dispute regarding the period of reduction under $37\ CFR\ 1.704(c)(10)$ for the filing of papers after the mailing of the notice of allowance should be timely raised in a request for reconsideration of the patent term under $37\ CFR\ 1.705(d)$ within two months after issuance and must include payment of the required fee under $37\ CFR\ 1.18(e)$.

The \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged.

The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent.

The application is being forwarded to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

C. J. Donnell

Christina Tartera Donnell Senior Petitioners Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

K&L Gates LLP P.O. Box 1135 CHICAGO IL 60690

MAILED

MAR 09 2011

OFFICE OF PETITIONS

In re Patent No. 7,850,521

: DECISION ON REQUEST FOR

RODGERS et al.

RECONSIDERATION OF

Issue Date: December 14, 2010

: PATENT TERM ADJUSTMENT

Application No. 11/464,347

: AND NOTICE OF INTENT TO ISSUE

Filed: August 14, 2006

CERTIFICATE OF CORRECTION

Atty Docket No. 3718611-03492

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)" filed February 14, 2011.

The request for reconsideration of the patent term adjustment indicated in the patent is GRANTED to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of two hundred seven (207) days.

Patentees request that the Office recalculate the period of patent term adjustment. Specifically, patentees direct the Office's attention to the filing of the petition to withdraw from issue, request for continued examination (RCE) and Information Disclosure Statement (IDS) on February 21, 2008.

A review of the application history confirms that patentees should have been assessed a delay for the filing of the petition to withdraw from issue, RCE and the IDS on February 21, 2008, after the mailing of the notice of allowance on October 16, 2007 (and after payment of the issue fee on January 10, 2008).

The Office mailed a response to the petition to withdraw from issue on February 22, 2008. Accordingly, the submission of the petition to withdraw from issue after the mailing of the notice of allowance is a proper basis under 37 CFR 1.704(c)(10) for reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping. See 37 CFR 1.704(c).

On May 4, 2009, a notice of allowance was mailed in response to the RCE and IDS filed February 21, 2008. A review of the IDS filed February 21, 2008, reveals that patentees did not include a statement under 37 CFR 1.704(d). Thus, patentees failed to engage in reasonable efforts to conclude prosecution of the application.

Pursuant to 37 CFR 1.704(c)(10)(i), a first period of reduction of 2 days should have been entered for the submission of the petition to withdraw from issue, counting the number of days beginning on the date the petition was filed, February 21, 2008, and ending on the mailing date of the response to the petition, February 22, 2008. Pursuant to 37 CFR 1.704(c)(10)(ii), a second period of reduction of the lesser period of 120 days should have been entered for the submission of the RCE and IDS, filed February 21, 2008, for which the Office responded to on May 4, 2009.²

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(10) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which

Pursuant to 37 CFR 1.704(d):

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

Pursuant to 37 CFR 1.704(c):

37 CFR 1.704(c) provides that "[c]ircumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application ... will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping." The first period of reduction of 2 days pursuant to 37 CFR 1.704(c)(10)(i) totally overlaps with the second period of reduction of 120 days pursuant to 37 CFR 1.704(c)(10)(ii). Accordingly, a single period of reduction of 120 days is being entered for these two periods of reduction.

In view thereof, the patent term adjustment indicated in the patent should be two hundred seven (207) days.

The \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the petition is acknowledged. No additional fee is required.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by two hundred seven (207) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Vaitera Donnell

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

⁽i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or

⁽ii) Four months;

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

: 7,850,521 B2

DATED

: Dec. 14, 2010

INVENTOR(S): Rodgers et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (327) days.

Delete the phrase "by 327 days" and insert – by 207 days--



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INTERNATIONAL FLAVORS & FRAGRANCES INC. 521 WEST 57TH ST NEW YORK NY 10019

MAILEDNOV 0 4 2010

In re Application of :

OFFICE OF PETITIONS

Catherine Marie Smith

Application No. 11/464,403 : DECISION ON PETITION

Filed: August 14, 2006

Attorney Docket No. IFF-133

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 6, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed February 17, 2010. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. The appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 41.37(b). As no claim was allowed, the application became abandoned on April 18, 2010. See MPEP 1215.04.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a RCE, with the required fee of \$810, an Appeal Brief, with the required fee of \$540, (2) the petition fee of \$1,620, and (3) a proper statement of unintentional delay. Accordingly the RCE and Appeal Brief are accepted as being unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to the Technology Center AU 1763 for appropriate action in the normal course of business for processing of the RCE received October 6, 2010

/Kimberly A. Inabinet/

Kimberly A. Inabinet Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

www.uspto.gov

HANSRA PATENT SERVICES 4525 GLEN MEADOWS PLACE BELLINGHAM WA 98226 MAILED MAR 25 2011

OFFICE OF PETITIONS

In re Application of

Bartz et al.

Application No. 11/464,691

Filed: August 15, 2006

Attorney Docket No. 5018-2

For: METHOD AND SYSTEM FOR

CONTACTLESS POINT-OF-SALE

TRANSACTION MANAGEMENT

DECISION ON PETITION

This is a decision on the petition, filed February 22, 2011, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition to withdraw the holding of abandonment is **GRANTED**.

This application was held abandoned for failure to reply to the final Office action mailed June 10, 2010, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on December 22, 2010.

Petitioner contends a reply to the final Office action was submitted on December 10, 2010. Petitioner states that an amendment, request for a three-month extension of time and Request Continued Examination (RCE) were filed on December 15, 2010 with a certificate of mailing dated December 10, 2010. A copy of a postcard receipt shows a reply was received on December 15, 2010. Petitioner also notes that the reply has been located in the electronic files of the Office.

Pursuant to 37 CFR 1.8, correspondence will be considered timely if the party who forwarded such correspondence:

- 1) Correspondence will be considered as being timely filed if:
- (i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:
- (A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail;
- (B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6 (d); or
- (C) Transmitted via the Office electronic filing system in accordance with $\S 1.6(a)(4)$; and
- (ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person

signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The petition satisfies the above requirements of 37 CFR 1.8. Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of June 10, 2010 is hereby withdrawn and the application restored to pending status.

The Office has located the original reply received on December 15, 2010.

The \$130.00 petition fee is not required and will be refunded to deposit account50-2198.

This application is being referred to Technology Center AU 3687 for appropriate action in the normal course of business on the reply received on December 15, 2010.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-

3215.

Charlema Grant

Petitions Attorney

hereen got

Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

James F. Coward Suite 505 650 5th Street San Francisco, CA 94107 MAILED

JAN 04 2011

OFFICE OF PETITIONS

In re Application of James F. Coward Application No. 11/464,740

Filed: August 15, 2006

Attorney Docket No. SARApatatent0002

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181 (no fee) filed May 28, 2010, requesting withdrawal of the holding of abandonment in the above-identified application. The delay in responding is sincerely regretted.

The petition is **dismissed**.

The above application was held abandoned for failure to timely file a response to the non-final Office action mailed March 30, 2009. A Notice of Abandonment was mailed on October 14, 2009.

Petitioner asserts, "...our initial response was sent within the time limit given, and that we made an additional request with the same package in October of 2009. I have included the original mailing with the data that the package was delivered with in the original time limit."

The file record does not include the original responses mailed in June 2009 or October 2009. A review of the evidence submitted on May 28, 2010, of the UPS Shipment Details, which shows that the package was delivered to 501 Dulany Street, Room 2A05 and received and signed for by someone in the United States Patent and Trademark Office (USPTO) on June 24, 2009 at 1:23 pm. However, MPEP 502 II. HAND-DELIVERY OF PAPERS states in part "No official paper which relates to a pending application may be personally delivered to a TC except papers that are directed to an application subject to a secrecy order pursuant to 35 U.S.C. 181, or are national security classified and that are directed to Licensing and Review. Effective December 1, 2003, all official patent application related correspondence for organizations reporting to the Commissioner for Patents (e.g., TCs, the Office of **>Data Management<, and the Office of Petitions) that is hand-carried (or delivered by other delivery services) must be delivered to the Customer Service Window,

with a few exceptions. Petitioner should note that these exceptions pertain to Request for Access, Patent Term Extensions under 35 U.S.C. 156, Assignments, etc. and does not apply to amendments.

Petitioner should further note that the benefits of 37 CFR 1.8 or 37 CFR 1.10 only applies to documents hand-carried or delivered to the Office by the U.S. Postal Service. Documents delivered or hand-carried via commercial couriers, e.g., Federal Express, DHL, Purolator, Air Borne or UPS will **not** obtain the benefits of 37 CFR 1.8 or 37 CFR 1.10.

If petitioner wanted the correspondence accepted on June 24, 2009, to be made in the official file record of the USPTO, the correspondence should have been properly addressed and delivered to the U.S. Patent and Trademark Office, Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314 or mailed to Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450. Since the correspondence was not properly addressed/delivered to the correct area of the USPTO, the correspondence received on June 24, 2009, was considered to be an informal/courtesy copy for the examiner; and thus, was not made of record in the above application.

In view of the above, petitioner is encouraged to file a petition to revive under 37 CFR 1.137(b) along with the \$810 may be filed. The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b). A blank petition under 37 CFR 1.137(b) is enclosed for petitioner's convenience.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition." This is not a final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314 The Centralized facsimile number is (571) 273-8300, and documentation to this number should be addressed to the Office of Petitions.

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO. To expedite consideration, petitioner may wish to contact the undersigned once the renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(b) has been filed.

Telephone inquiries concerning this decision should be directed to the undersigned at

(571) 272₁3226.

Petitions Examiner
Office of Petitions

Enclosures: Petition for Revival of an Application Abandoned Unintentionally Under 37

CFR 1.137(b) - Form No. PTO/SB/64

Privacy Act Statement



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

SA Photonics Suite A 130 Knowles Drive Los Gatos, CA 95032

MAILED

MAY 232011

OFFICE OF PETITIONS

In re Application of James F. Coward Application No. 11/464,740

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DECISION ON PETITION

Filed: August 15, 2006

Attorney Docket No. SARApatatent0002

This is a decision on the petition under 37 CFR 1.137(b) filed April 25, 2011, requesting to revive the above-identified application.

The petition is dismissed.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to revive an abandoned application for patent based on unintentional delay or to accept an unintentionally delayed payment of a fee for issuing a patent. In this instance, the fee required by law is \$810.

The present petition indicates that a fee payment in the amount of \$810 is enclosed. However, the above-identified application was <u>not</u> accompanied by the required petition fee. Therefore, no consideration on the merits can be given to the present petition until the required fee of \$810 has been received.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 40l Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

y questions concerning this matter may be directed to the undersigned at (571) 272-3226.

Petitions Examiner
Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

SA Photonics Suite A 130 Knowles Drive Los Gatos, CA 95032

MAILED

JUL 05 2011

OFFICE OF PETITIONS

In re Application of

James F. Coward

Application No. 11/464,740

Filed: August 15, 2006

Attorney Docket No. SARApatatent0002

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b) filed June 14, 2011, requesting to revive the above-identified application.

In response to the decision mailed May 23, 2011, petitioner submits the present renewed petition along with the requisite petition fee of \$810.

Since the petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of \$810; and (3) a proper statement of unintentional delay, the petition is **GRANTED**.

This application file is being referred to Technology Center Art Unit 2613 for review of the amendment filed April 25, 2011.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith

Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 7293483

Issue Date: November 13,2007

:DECISION GRANTING PETITION Application No. 11464745 :UNDER 37 CFR 1.378(c)

August 15,2006 Filed:

Attorney Docket No. BGFT08US01

February 13,2012 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 3.5

The petition is **GRANTED**.

February 13,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO	ACCEPT UNIN		LY DELAYED F ATENT (37 CF)	RAYMENT OF MAINTENANCE FEE IN AN R 1.378(c))			
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
7293483	2007-11-13	11464745	2006-08-15	BGFT08US01			
of the actual U.S. a 1.366(c) and (d). SMALL ENTITY		ssuance of that pa	tent to ensure the fe	entify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR			
	EMENT TO SMALL EN		See 37 CFR 1.27(g)				
NOT Small Entity			Small Entity				
Fee → 3½ year	Code (1551)		Fee 3 ½ year	Code (2551)			
7 ½ year	(1552)		7 ½ year	(2552)			
○ 11 ½ year	r (1553)		11 ½ year	(2553)			
SURCHARGE The surcharge req of the maintenance)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE I	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES			
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."							
I certify, in accordance with 37 CFR 1.4(d)(4) that I am							
\circ	or agent registered to	oractice before the	Patent and Tradem	ark Office			
A sole patentee							
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.							
A joint patentee; all of whom are signing this e-petition							
The assigne	The assignee of record of the entire interest						

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	Signature /Russell S. Krajec/ Date (YYYY-MM-DD) 2012-02-13					
Name	Russell S. Krajec	Registration Number	48936			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

DATE	:02/17/11		Pap	er No.:
TO SPE OF	: ART UNIT 3726			
SUBJECT		Correction for Appl. No.: <u>11464797</u>	_ Patent No.:	<u>7814656</u>
		Cof	C mailroom date:	02/03/11
Please resp	ond to this request for	a certificate of correction with	n 7 days.	
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Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

WOOD, HERRON & EVANS, LLP (SYBRON) 441 VINE STREET 2700 CAREW TOWER CINCINNATI OH 45202

MAILED

DEC 01 2010

OFFICE OF PETITIONS

In re Application of Andreiko

Application No. 11/464,909

Filed/Deposited: 16 August, 2006

Attorney Docket No. ORM-211CP

DECISION

This is a decision on the petition filed on 30 August, 2010, considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition under 37 C.F.R. §1.181 is **DISMISSED**.

Any request for reconsideration of this decision should be filed <u>within two (2) months</u> from the mail date of this decision. *Note* 37 C.F.R. §1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 C.F.R. §1.181 to Withdraw the Holding of Abandonment."

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

As to the Request to Withdraw the Holding of Abandonment

<u>Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing and timeliness requirements for relief under 37 C.F.R. §1.181.</u>

Petitioner appears <u>not</u> to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. <u>Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).</u>

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly, to the new grounds for rejection set forth in the Examiner's Answer filed before the Board of Patent Appeals and Interferences (BPAI) and mailed on 6 January, 2010, with reply due pursuant to the regulations at 37 C.F.R. §41.39(b) on or before 6 March, 2010.

The application went abandoned by operation of law after midnight 6 March, 2010.

The BPAI noted this failure and Ordered action on 7 June, 2010.

The Office mailed the Notice of Abandonment on 29 July, 2010.

On 30 August, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.181 and averred timely submission of a reply on 2 June, 2010, in the form of a request for continued examination (RCE) and fee and a submission under the provisions of 37 C.F.R. §1.114 in the form of an amendment. Petitioner, however, appears to have ignored the provisions of the regulations at 37 C.F.R. §41.39(b) and (c), which limits, respectively, the nature of the reply and the provisions under which extensions of time may be obtained. Moreover, it does not appear that Petitioner sought an extension of time in any context and clearly not pursuant to the regulations at 37 C.F.R. §1.136(b).

Thus, it appears that Petitioner did not comply with the guidance as set forth below in the citation from the Manual of Patent Examining Procedure (MPEP).

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, the guidance in the Commentary at MPEP §711.03(c)(I) provides in pertinent part:

37 C.F.R. §1.10(c) through §1.10(e) and §1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 C.F.R. §1.10(c), (d), (e), or (g) (see MPEP §513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.

Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP §503. For example, if the application has been held abandoned for

failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt. The shows the shown on the post card receipt.

Where a certificate of mailing under 37 C.F.R. §1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 C.F.R. 1.8(b) and MPEP §512. As stated in 37 C.F.R. §1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 C.F.R. §1.8).

37 C.F.R. §1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 C.F.R. §1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP §512.

If Petitioner is unable to comply with and/or otherwise satisfy these requirements, Petitioner may wish to revive the application: Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See:

http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (see: 37 C.F.R. §1.181(f)), and those registered to practice and all others who

See: MPEP §711.03(c) (I)(B).

Application No. 11/464,909

make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.²

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears not to have made the showing required.

CONCLUSION

Accordingly, The petition under 37 C.F.R. §1.181 is dismissed.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See:

http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay <u>must be filed promptly and such</u> <u>petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)</u>

² <u>See</u> supplement of 17, June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. <u>See Changes to Patent Practice and Procedure</u>, 62 <u>Fed. Reg.</u> at 53160 and 53178, 1203 <u>Off. Gaz. Pat. Office</u> at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Application No. 11/464,909

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

By facsimile:

(571) 273-8300

Attn: Office of Petitions

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catte adina

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2³) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

The regulations at 37 C.F.R. §1.2 provide: §1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

WOOD, HERRON &
EVANS, LLP (SYBRON)
441 VINE STREET
2700 CAREW TOWER
CINCINNATI OH 45202

MAILED

FEB 01 2011

OFFICE OF PETITIONS

In re Application of

Andreiko

Application No. 11/464,909

Filed/Deposited: 16 August, 2006

Attorney Docket No. ORM-211CP

DECISION

This is a decision on the petition filed on 3 January, 2011, pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

The petition under 37 C.F.R. §1.137(b) is **GRANTED**.

As to the Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly, to the new grounds for rejection set forth in the Examiner's Answer filed before the Board of Patent Appeals and Interferences (BPAI) and mailed on 6 January, 2010, with reply due pursuant to the regulations at 37 C.F.R. §41.39(b) on or before 6 March, 2010.

The application went abandoned by operation of law after midnight 6 March, 2010.

The BPAI noted this failure and Ordered action on 7 June, 2010.

The Office mailed the Notice of Abandonment on 29 July, 2010.

On 30 August, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.181 and averred timely submission of a reply on 2 June, 2010, in the form of a request for continued examination (RCE) and fee and a submission under the provisions of 37 C.F.R. §1.114 in the form of an amendment. Petitioner, however, appears to have ignored the provisions of the regulations at 37 C.F.R. §41.39(b) and (c), which limits, respectively, the nature of the reply and the provisions under which extensions of time may be obtained. Moreover, it does not appear that Petitioner sought an extension of time in any context and clearly not pursuant to the regulations at 37 C.F.R. §1.136(b). It appeared that Petitioner did not comply with the guidance as set forth in the citation from the Manual of Patent Examining Procedure (MPEP), and the petition was dismissed on 1 December, 2010.

.On 3 January, 2011, Petitioner filed a petition (pursuant to 37 C.F.R. §1.137(b), with fee, and pointed to his reply in the form of his 2 June, 2010, request for continued examination (RCE) and fee and a submission under the provisions of 37 C.F.R. §1.114 in the form of an amendment, and made a statement of unintentional delay.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice <u>and</u> all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.¹

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).²

¹ See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

² 35 U.S.C. §133 provides:

³⁵ U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

Application No. 11/464,909

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.³))

As to Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is granted.

The instant application is released to the Technology Center/AI 3732 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Therefore, by example, an <u>unintentional</u> delay in the reply might occur if the reply and transmittal form are <u>to be</u> prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

Application No. 11/464,909

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2⁴) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

The regulations at 37 C.F.R. §1.2 provide: §1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

Doc Code: PET.PTA.RCAL

Document Description: Request for Recalculation in view of Wyeth

Approved for use through 02/28/2011. OMB 0651-0020

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH*

Attorney Docket Patent Number: 7,668,224 TI-60518 Number: Filing Date Issue Date: 02/23/2010 (or 371(b) or (f) Date): 08-16-2006

First Named

Dale E. Hocevar Inventor:

Title: ENCODING FOR DIGITAL COMMUNICATIONS IN A MULTIPLE-INPUT, MULTIPLE-OUTPUT ENVIRONMENT

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature / Wade J. Brady III /	Date August 12, 2010
Name (Print/Typed) Wade J. Brady III	Registration Number 32,080

<u>Note</u>: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature,

~	*Total of1	forms are submitted
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The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/18/2010

TEXAS INSTRUMENTS INCORPORATED P O BOX 655474, M/S 3999 DALLAS, TX 75265

Applicant : Dale E. Hocevar

Patent Number: 7668224 Issue Date : 02/23/2010 Application No: 11/465,020

Filed : 08/16/2006 : DECISION ON REQUEST FOR : RECALCULATION of PATENT

: TERM ADJUSTMENT IN VIEW : OF WYETH AND NOTICE OF INTENT TO

: ISSUE CERTIFICATE OF CORRECTION

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 739 days. The USPTO will sua sponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



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MAILED

AUG 27 2010

In re Application of Sergio Lemaitre

OFFICE OF PETITIONS

Application No. 11/465,110

ON PETITION

Filed: August 16, 2006

Attorney Docket No. GE.0082

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 5, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed May 8, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 9, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$810, and the submission required by 37 CFR 1.114; (2) the petition fee of \$1620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 2882 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

April M. Wise

Petitions Examiner
Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Hanley, Flight & Zimmerman, LLC 150 S. Wacker Dr. Suite 2100 Chicago IL 60606

MAILED
FEB 1 5 2012
OFFICE OF PETITIONS

In re Patent of

Wright et al.

Application No. 11/465260

Filing or 371(c) Date: 08/17/2006

Patent No: 8,065,697

Issue Date: 11/22/2011

Attorney Docket No.

20004/261-US

: DECISION ON REQUEST

: FOR RECONSIDERATION OF

: PATENT TERM ADJUSTMENT

: UNDER 37 CFR 1.705(d)

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(d), filed on January 19, 2012. Patentee requests that the determination of patent term adjustment be corrected from 168 days to 194 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one hundred ninety-four (194) days is **GRANTED**.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one hundred ninety-four (194) days.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one hundred ninety-four (194) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE CERTIFICATE OF CORRECTION

PATENT

: 08,065,697 B2

DATED

: November 22, 2011

INVENTOR(S): Wright et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 168 days.

Delete the phrase "by 168 days" and insert - by 194 days--



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

PATENTIQUE PLLC P.O. BOX 50368 BELLEVUE WA 98015

MAILED

SEP 13 2010

In re Application of Medghalchi et al.

Application No. 11/465,403 :

Filed: August 17, 2006

Attorney Docket No. 025743-000110US

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 26, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment and Response under 37 CFR 1.111, (2) the petition fee of \$810.00, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

This matter is being referred to Technology Center AU 1641 for further examination on the merits.

Liana Walsh

Petitions Examiner Office of Petitions

Jananalse ,



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.usplo.gov

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 600 GALLERIA PARKWAY, S.E. STE 1500 ATLANTA GA 30339-5994

MAILED

MAR 28 2011

OFFICE OF PETITIONS

In re Application of

Kuo-Ming Wu et al.

Application No. 11/465,452

Filed: August 18, 2006

Attorney Docket No. 251812-1800

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 06, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed February 01, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on May 02, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$1620, and (3) an adequate statement of unintentional delay. Accordingly, the response to the final Office action of February 01, 2010 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to Technology Center AU 2611 for appropriate action on the concurrently filed amendment.

Rathesh Krishnamurthy Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

PPG INDUSTRIES INC INTELLECTUAL PROPERTY DEPT ONE PPG PLACE PITTSBURGH PA 15272

MAILED

JAN 3 1 2011

OFFICE OF PETITIONS

In re Application of Lawrence G. Anderson

Application No. 11/465,624

Filed: August 18, 2006

Attorney Docket No. 2135A1

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 18, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D).

The instant petition lacks item (1)

With regards to item (1) petitioner has failed to submit the required \$130.00 Surcharge fee as requested in the Notice mailed September 5, 2006.

Additionally, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent application. In

accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop PETITIONS
Commissioner for Patents

Post Office Box 1450

Alexandria, VA 22313-1450

By hand: \bigcup

U.S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-7751.

Joan Olszewski

Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

PPG INDUSTRIES INC INTELLECTUAL PROPERTY DEPT ONE PPG PLACE **PITTSBURGH PA 15272**

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MAR 17:2011

OFFICE OF PETITIONS

In re Application of

Lawrence G. Anderson

Application No. 11/465,624

Filed: August 18, 2006

Attorney Docket No. 2135A1

DECISION ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed March 3, 201, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice) mailed September 5, 2006. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on November 6, 2006. A Notice of Abandonment was mailed on May 11, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) an Oath or Declaration (previously submitted May 18, 2007) and the \$130.00 Surcharge fee; (2) the petition fee of \$1,500.00 (previously submitted May 18, 2007), and (3) a proper statement of unintentional delay.

Further, it is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must notify the Office.

Additionally, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

The address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to the Office of Patent Application Processing for further processing in accordance with this decision on petition.

Yoan Olszewski Petitions Examiner Office of Petitions

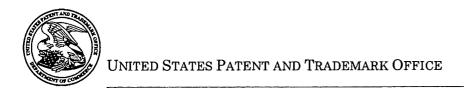
Loun Ohner

cc: Steven W. Hays

Pietragallo Gordon Alfano Bosick & Raspanti, LLP

One Oxford Centre, 38th Floor

301 Grant Street Pittsburgh, PA 15219



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450

Hanley, Flight & Zimmerman, LLC 150 S. Wacker Drive Ste. 2100 Chicago, Illinois 60606

MAR 22 2011

MAILED

OFFICE OF PETITIONS

In re Application of

Manoj K. MENON et al.

Application No. 11/465,660

Filed: 18 August 2006

Atty. Docket No.: 201672IT

DECISION GRANTING PETITION

UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed 7 January 2011, to revive the above-identified application ("Application").

The petition is **GRANTED**.

The Application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed 1 June 2010 ("outstanding Office action"), which set a shortened statutory reply period of three (3) months. The application thus became abandoned on 2 September 2010, with notification mailed 7 December 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a Statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a Request for Continued Examination, submission under 37 CFR 1.114, and the RCE fee, (2) a petition fee of \$1620.00 and (3) a Statement of unintentional delay. The reply to the outstanding Office action is accepted as having been unintentionally delayed.

The three month extensions of time of \$1110 was purchased outside the maximum extendable time period. Accordingly, the \$1110 extension of time fee is being refunded to petitioner's Deposit Account No. 50-4540.

There is no indication that the person signing the instant Petition was given a power of attorney or authorization of agent to prosecute the Application. Further, it is not apparent whether the signer of the Petition was in a position to have firsthand knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of the delay. See, 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (10 October 1997), 1203 Off. Gaz. Pat. Office 63, 103 (21 October 1997). In the event that such an inquiry has not been made, Petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, Petitioner must notify the Office.

General inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-8427).

The application file will be referred to Technology Center Art Unit 3626 for further action on the filed Response.

David Bucci

Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

KRIEGER INTELLECTUAL PROPERTY, INC. PO BOX 872438
VANCOUVER, WA 98687-2438

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OFFICE OF PETITIONS

In re Application of

Lum et al.

Application No. 11/465,722

Filed: August 18, 2006

Attorney Docket No. SLA1817.2

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 20, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to file a reply within the meaning of 37 CFR 1.113 to the final Office action of April 30, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is July 31, 2010. A Notice of Abandonment was mailed February 16, 2011..

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) including the fee of \$810 and the submission required by 37 CFR 1.114, (2) the petition fee of \$1,620, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

This application is being referred to Technology Center AU 2625 for processing of the RCE and for appropriate action by the Examiner in the normal course of business in accordance with 37 CFR 1.114.

Alicia Kelley-Collier Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

HUSCH BLACKWELL, LLP
HUSCH BLACKWELL SANDERS LLP WELSH & KATZ
120 S. RIVERSIDE PLAZA, 22ND FLOOR
CHICAGO, IL 60606

MAILED
JUL 07 2011
OFFICE OF PETITIONS

In re Application of

John R KOCHAN, JR.

Application No. 11/465,858 Filed: August 21, 2006

Attorney Docket No. 8367/97738 (MET-P-

0251)

DECISION ON PETITION UNDER 37 CFR 1.137(b)

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 16, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice of Non-Compliant Amendment, mailed July 1, 2010, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 2, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$810; and (3) an adequate statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Monica A. Graves at (571) 272-7253.

This application is being referred to Technology Center AU 3746 for appropriate action by the Examiner in the normal course of business.

Thurman K. Page Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

FEMAL & ASSOCIATES 812 N. BELMONT AVE. ARLINGTON HEIGHTS, IL 60004-5606

MAILED

OCT 20 2010

In re Application of Janet Lynn LaLond

Application No. 11/465,867

Filed: August 21, 2006

Attorney Docket No. JL - 100

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition, filed August 26, 2010, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action of July 23, 2009, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before October 23, 2009.

Petitioner states that a timely reply was mailed via certificate of mailing on November 23, 2009, which included an Amendment and Petition for Extension of Time. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated November 23, 2009, which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated,

or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of July 23, 2009 is hereby withdrawn and the application restored to pending status.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been mailed (or transmitted by facsimile) on November 23, 2009.

This application is being referred to Technology Center AU 3727 for appropriate action in the normal course of business on the reply received with petition.

Sherry D. Brinkley Petitions Examiner

Office of Petitions

cc: MICHAEL J. FEMAL

Shevy S. Brilly

MCDONALD HOPKINS LLC

640 NORTH LASALLE STREE, SUITE 590

CHICAGO, IL 60654



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

Patent No. : 7,732,607 B2 Ser. No. : 11/465,914 Inventor(s) : Mazurov et al. Issued : June 8, 2010

Title : HETEROARYL- SUBSTITUTED DIAZATRICYCLOALKANES AND

METHODS OF USE THEREOF Docket No. : T103 1710.1

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based solely on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing <u>incorrect or erroneous</u> assignment data, before issuance of a Certificate of Correction, under 37 CFR 1.323 (see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481). This procedure is required at any time after the issue fee is paid, including after issuance of the patent.

In view of the foregoing, your request, in this matter, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

- A. the processing fee set forth in 37 CFR 1. 17(i) (currently \$130);
- <u>B.</u> a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
- <u>C.</u> a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 40l Dulany Street Alexandria, VA 22314

By fax:

(703) 872-9306

ATTN: Office of Petitions

If a fee (currently \$100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Ennis Young
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) 272-3435 or (703) 756-1814



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/465,967	08/21/2006	Louis P. Slothouber	63001.000024	1225
21967 7590 05/11/2011 HUNTON & WILLIAMS LLP INTELLECTUAL PROPERTY DEPARTMENT			EXAMINER	
			LAWSON, DONALD L	
1900 K STREET, N.W. SUITE 1200		ART UNIT	PAPER NUMBER	
WASHINGTON, DC 20006-1109			2154	
			MAIL DATE	DELIVERY MODE
			05/11/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Hunton & Williams LLP Intellectual Property Department 1900 K Street, N.W., Suite 1200 Washington, DC 20006

In re Application of: Louis SLOTHOUBER, et al. Application No. 11/465,967 Filed: August 21, 2006

For: SYSTEM AND METHOD FOR

RECOMMENDING ITEMS OF INTEREST

TO A USER

DECISION ON PETITION UNDER 37 CFR § 1.48(a)

This is a decision on the petition, filed on 20 June 2008, under 37 C.F.R. § 1.48(a).

The petition is **GRANTED**.

The application is being forward to Technology Center Support Staff to add inventor, Jeffrey William JOHNSTON, in the PALM database.

/Vincent N. Trans/

Vincent N. Trans, SPRE/QAS
Technology Center 2100
Computer Architecture and Software
571-272-3613



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

CHOATE, HALL & STEWART CITRIX SYSTEMS, INC. TWO INTERNATIONAL PLACE BOSTON MA 02110

MAILED

NOV 22 2010

In re Application of

OFFICE OF PETITIONS

VENKATRAMAN, Charu et al. Application No. 11/465,980

DECISION ON PETITION

Filed: August 21, 2006

TO WITHDRAW FROM RECORD

Attorney Docket No. 2006579-0640 (CTX-223)

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 10, 2010.

The request is **NOT APPROVED**.

The Office will no longer accept address changes to a new practitioner or law firm filed with a Request, absent the filing of a power of attorney to the new representative. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor.

Accordingly, the request to withdraw from record cannot be approved because the request to change the correspondence address is not that of: (1) the first named inventor; or (2) an assignee of the entire interest under 37 C.F.R 3.71 who has properly intervened.

If an assignee has intervened in this application, then a Statement under 37 CFR 3.73(b) or a copy of the actual assignment must be submitted with a renewed request.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at 571-272-2783.

/Tredelle D. Jackson/ Paralegal Specialist Office of Petitions

cc:

FOLEY & LARDNER LLP 111 HUNTINGTON AVENUE 26TH FLOOR BOSTON, MA 02199-7610



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

CHOATE, HALL & STEWART LLP TWO INTERNATIONAL PLACE **BOSTON, MA 02110**

MAILED DEC 272010 OFFICE OF PETITIONS

In re Application

Kanekar et al.

Application No. 11/466,014

Filed: August 21, 2006

Attorney Docket No. 2006579-0716 (CTX-

255)

DECISION ON PETITION TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 10, 2010.

The request is **DISMISSED**.

A review of the file record indicates that Choate, Hall & Stewart LLP was never appointed power of attorney in this patent application and therefore, was only designated as the correspondence address of record. As a result, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

All future communications from the Office will continue to be directed to the abovelisted address until otherwise notified by applicant.

There are no outstanding Office actions that require a reply from the applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6059. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Alicia Kelley **Petitions Examiner** Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
WWW.USD†O.QOV

MASCHOFF GILMORE & ISRAELSEN 1441 W. UTE BLVD., SUITE 100 PARK CITY UT 84098-7633

MAILED

NOV 23 2011

OFFICE OF PETITIONS

In re Application of

T. Clay WILKKES

Application No. 11/466,069

Filed: August 21, 2006

Attorney Docket No. G1064.10008US02

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 09, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before May 11, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed February 11, 2011. Accordingly, the date of abandonment of this application is May 12, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of \$870.00 and the publication fee of \$300.00, (2) the petition fee of \$930.00 and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4231.

This application is being referred to the Office of Data Management for processing into a patent.

Michelle R. Eason

Paralegal Specialist

Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

DR CARMINE F VASILE 60 HERBERT CIRCLE PATCHOGUE NY 11772 MAILED
DEC 2 2 2010
OFFICE OF PETITIONS

ON PETITION

In re Application of
Carmine F. Vasile

Application No. 11/466,084 :

Filed: August 21, 2006

Title: Advanced Gravity-Film &

Double-Helix Heat Exchangers

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed December 1, 2010.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely file a reply in response to the Notice of Non-Compliant Amendment, mailed April 12, 2010. This Notice set an extendable period for reply of one (1) month. No extensions of time under 37 CFR 1.136(a) were obtained. No reply having been received, the above identified application became abandoned on May 13, 2010. The Office mailed a Notice of Abandonment on October 27, 2010.

Petitioner states that he did not receive the April 12, 2010 Notice of Non-Compliant Amendment.

To establish nonreceipt of an Office action, a petitioner must:

1) include a statement that the Office action was not received;

2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and 3) include a copy of the docket record where the nonreceived Office action would have been entered had it been received and docketed. A proper docket report consists of a "docket record where the nonreceived Office action would have been entered had it been received and docketed." For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket record showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted..."

However, as petitioner is a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. In that case, if petitioner seeks to establish that he did not receive the April 12, 2010 Notice of Non-Compliant Amendment, petitioner must explain his system for keeping track of patent matters; where he keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence, petitioner must explain how he reminds himself of response due dates and show that the due date for the April 12, 2010 Notice was not entered into that system.

While the showing of record is not sufficient to establish to withdraw the holding of abandonment, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m), currently \$810 for a small entity; and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

A copy of the form for a petition to revive under 37 CFR 1.137(b) is enclosed for petitioner's convenience.

See MPEP 711.03(c)(II).

 $^{^{2}}$ MPEP 711.03(c)(II) (emphasis added).

³ <u>Id.</u>

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petitions

Commissioner for Patents

P.O. Box 1450

Alexandria VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

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Cliff Congo Petitions Attorney Office of Petitions

Enc: PTO/SB/64 (2 pages)

Privacy Act Statement (1 page)



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED

MAR 09 2011

OFFICE OF PETITIONS

DR CARMINE F VASILE 60 HERBERT CIRCLE PATCHOGUE NY 11772

In re Application of :

Carmine F. Vasile

Application No. 11/466,084 : ON PETITION

Filed: August 21, 2006

Title: Advanced Gravity-Film & :

Double-Helix Heat Exchangers

This is a decision on the renewed petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed February 17, 2011.

The petition under 37 CFR 1.181 is DISMISSED.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely file a reply in response to the Notice of Non-Compliant Amendment, mailed April 12, 2010. This Notice set an extendable period for reply of one (1) month. No extensions of time under 37 CFR 1.136(a) were obtained. No reply having been received, the above identified application became abandoned on May 13, 2010. The Office mailed a Notice of Abandonment on October 27, 2010. Applicant filed a petition to withdraw the holding of abandonment on December 1, 2010. However, the petition was dismissed in a decision mailed on December 22, 2010.

Petitioner states that he did not receive the April 12, 2010 Notice of Non-Compliant Amendment. In support thereof, petition explains that his "filing system consists of placing everything received from the US and Canadian patent office into a folder, with dates written on [the] cover."

As petitioner is a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. In that case, if petitioner seeks to establish that he did not receive the April 12, 2010 Notice of Non-Compliant Amendment, petitioner must explain his system for keeping track of patent matters; where he keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence, petitioner must explain how he reminds himself of response due dates and show that the due date for the April 12, 2010 Notice was not entered into that system.

Here, petitioner has only stated that he keeps all of his received patent correspondence in a folder. Petitioner has not explained how he reminds himself of due dates. In addition, as petitioner has stated that he writes the dates on the cover of his folder, petitioner is requested to supply a photocopy of the folder with the dates thereon.

While the showing of record is not sufficient to establish to withdraw the holding of abandonment, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m), currently \$810 for a small entity; and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

A copy of the form for a petition to revive under 37 CFR 1.137(b) is enclosed for petitioner's convenience.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petitions Commissioner for Patents P.O. Box 1450 Alexandria VA 22313-1450 By FAX:

(571) 273-8300

Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

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Cliff Congo Petitions Attorney Office of Petitions

Enc: PTO/SB/64 (3 pages)

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

DR CARMINE F VASILE 60 HERBERT CIRCLE PATCHOGUE NY 11772 MAILED MAY 18 2011

OFFICE OF PETITIONS

In re Application of :

Carmine F. Vasile :

Application No. 11/466,084 : ON PETITION

Filed: August 21, 2006

Title: Advanced Gravity-Film & :

Double-Helix Heat Exchangers

This is a decision on the petition under 37 CFR 1.137(b), filed May 6, 2011 and again on May 9, 2011, which is being treated as a renewed petition under 37 CFR 1.181 to withdraw the holding of abandonment, due to the fact that applicant did not submit the fee required for a petition under 37 CFR 1.137(b).

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely file a reply in response to the Notice of Non-Compliant Amendment, mailed April 12, 2010. This Notice set an extendable period for reply of one (1) month. No extensions of time under 37 CFR 1.136(a) were obtained. No reply having been received, the above identified application became abandoned on May 13, 2010. The Office mailed a Notice of Abandonment on October 27, 2010.

Applicant filed a petition to withdraw the holding of abandonment on December 1, 2010. However, the petition was dismissed in a decision mailed on December 22, 2010. Applicant filed a renewed petition on February 15, 2011. Applicant stated that he did not receive the April 12, 2010 Notice of Non-Compliant Amendment. In support thereof, petition explained that his "filing system consists of placing everything received from the US and Canadian patent office into a folder, with dates written on [the] cover." The petition was dismissed in a decision mailed on March 9, 2011. The decision requested that petitioner explain how it is that he reminds himself of due dates. In addition, the decision requested that petitioner supply a photocopy of the cover of his folder, where he purportedly writes down due dates.

With the instant petition, petitioner has not provided any of the information requested in the March 9, 2011 dismissal. Rather, petitioner states that because the Department of Labor is required to provide a Certificate of Service with certain items of their correspondence¹, the USPTO is likewise required to do the same. Petitioner's argument has been considered, but is not persuaded. The USPTO is not governed by the rules of practice of the Department of Labor. Petitioner should consult the Manual of Patent Examining Procedure to apprise himself of the rules of patent practice that are followed by the USPTO.

While the showing of record is not sufficient to establish to withdraw the holding of abandonment, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m), currently \$810 for a small entity; and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

A copy of the form for a petition to revive under 37 CFR 1.137(b) is enclosed for petitioner's convenience. A petition to revive must be accompanied by the \$810 petition fee.

Further correspondence with respect to this matter should be addressed as follows:

Petitioner has provided a copy of a letter from the Department of Labor, denying a claim for compensation.

Application No. 11/466,084

Page 3

By mail:

Mail Stop Petitions

Commissioner for Patents

P.O. Box 1450

Alexandria VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

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Cliff Congo Petitions Attorney Office of Petitions

Enc: PTO/SB/64 (3 pages)

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usbto.gov

DR CARMINE F VASILE 60 HERBERT CIRCLE PATCHOGUE NY 11772 JUN 2 0 2011

OFFICE OF PETITIONS

In re Application of
Carmine F. Vasile

Application No. 11/466,084 : ON PETITION

Filed: August 21, 2006 :

Title: Advanced Gravity-Film & :

Double-Helix Heat Exchangers

This is a decision on the letter filed June 6, 2011, which is being treated as a renewed petition under 37 CFR 1.181 to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely file a reply in response to the Notice of Non-Compliant Amendment, mailed April 12, 2010. This Notice set an extendable period for reply of one (1) month. No extensions of time under 37 CFR 1.136(a) were obtained. No reply having been received, the above identified application became abandoned on May 13, 2010. The Office mailed a Notice of Abandonment on October 27, 2010.

Applicant filed a petition to withdraw the holding of abandonment on December 1, 2010. However, the petition was dismissed in a decision mailed on December 22, 2010. Applicant filed a renewed petition on February 15, 2011. Applicant stated that he did not receive the April 12, 2010 Notice of Non-Compliant Amendment. In support thereof, petition explained that his "filing system consists of placing everything received from the US and Canadian patent office into a folder, with dates written on [the] cover." The petition was dismissed in a decision mailed on March 9, 2011. The decision requested that petitioner explain how it is that he reminds himself of due dates. In addition, the decision requested that petitioner supply a photocopy of the cover of his folder, where he purportedly writes down due dates.

In a renewed petition filed May 6, 2011 and May 9, 2011, petitioner did not provide any of the information requested in the March 9, 2011 dismissal. Rather, petitioner stated that because the Department of Labor is required to provide a Certificate of Service with certain items of their correspondence¹, the USPTO is likewise required to do the same. In a decision mailed on May 18, 2011, the Office explained that Petitioner's argument was considered, but was not persuasive. The decision noted that the USPTO is not governed by the rules of practice of the Department of Labor. Petitioner was instructed to consult the Manual of Patent Examining Procedure to if he wished to apprise himself of the rules of patent practice that are followed by the USPTO.

With the instant renewed petition filed June 6, 2011, petitioner has provided a copy of his "folder" (a US Priority Mail envelope) with various dates written on the cover. However, this folder does not serve as a reliable record of the prosecution history in the instant application. It is noted that there are no entries for certain Office communication and responses from Applicant listed on the folder. For example, the Office mailed a non-final Office action on March 24, 2009. Yet no entry for this Office action is listed on the folder. However, petitioner had to have received this Office action, as he timely filed a reply on June 22, 2009 (which is also not listed on the folder).

In addition, petitioner has failed to explain how he reminds himself of due dates, as was requested in the March 9, 2011 decision.

Petitioner has provided a copy of a letter from the Department of Labor, denying a claim for compensation.

Petitioner once again argues that other government agencies do not engage in "mail fraud", and cites the Office's attention to Canada as one government that requires proof of service. Just as the May 18, 2011 decision explained that the USPTO is not governed by the rules of practice of the US Department of Labor, the USPTO is certainly not governed by Canadian laws, rules of practice, and procedures. Nor does the USPTO engage in "mail fraud". Rather, there is a presumption that mail sent from the Office is received by applicants. If an applicant does not receive a piece of mail from the Office, the burden is on applicant to overcome this presumption. A copy of MPEP 711.03(c) is enclosed for applicant's convenience. In particular, applicant should refer to subsection I(A) - Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action.

While the showing of record is not sufficient to withdraw the holding of abandonment, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m), currently \$810 for a small entity; and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

Petitioner requests a refund of the \$810 petition fee for a petition to revive under 37 CFR 1.137(b). The Office can not grant petitioner's request. As set forth in MPEP 711.03(c) (II) (B), for petitions filed under 37 CFR 1.137:

the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(1) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

Lastly, petitioner requests that the Office forward his letter to the Inspector General. Petitioner's request is dismissed. Petitioner is directed to 37 CFR 1.4(c), which states:

Since different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petitions

Commissioner for Patents

P.O. Box 1450

Alexandria VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

culf

Cliff Congo Petitions Attorney Office of Petitions

Enc: copy of MPEP section 711.03(c) - 4 pages

(D) Proceedings are terminated after a decision by the court as explained in MPEP § 1216.01.

711.03 Reconsideration of Holding of Abandonment; Revival

When advised of the abandonment of his or her application, applicant may either ask for reconsideration of such holding, if he or she disagrees with it on the basis that there is no abandonment in fact; or petition for revival under 37 CFR 1.137.

Holding Based on Insufficiency of Reply

Applicant may deny that the reply was incomplete.

While the primary examiner has no authority to act upon an application in which no action by applicant was taken during the period for reply, he or she may reverse his or her holding as to whether or not an amendment received during such period was responsive and act on an application of such character which he or she has previously held abandoned. This is not a revival of an abandoned application but merely a holding that the application was never abandoned. See also MPEP § 714.03.

711.03(b) Holding Based on Failure To Reply Within Period

When an amendment reaches the U.S. Patent and Trademark Office after the expiration of the period for reply and there is no dispute as to the dates involved, no question of reconsideration of a holding of abandonment can be presented.

However, the examiner and the applicant may disagree as to the date on which the period for reply commenced to run or ends. In this situation, as in the situation involving sufficiency of reply, the applicant may take issue with the examiner and point out to him or her that his or her holding was erroneous.

711.03(c) [R-6] Petitions Relating to Abandonment

37 CFR 1.135. Abandonment for failure to reply within time period.

- (a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.
- Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.
- When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

37 CFR 1.137. Revival of abandoned application, terminated reexamination proceeding, or lapsed patent.

(a) Unavoidable. If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under § 1.550(d) or 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in § 1.17(1);

**>

- (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

(b) Unintentional. If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under § \$ 1.550(d) or 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.
- (c) Reply. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

- d) Terminal disclaimer.
 (1) Any petition to revive pursuant to this section in a design application must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any petition to revive pursuant to this section in either a utility or plant application filed before June 8, 1995, must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of:
 - The period of abandonment of the application; or
- The period extending beyond twenty years from the date on which the application for (ii) the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), from the date on which the earliest such application was filed.
- (2) Any terminal disclaimer pursuant to paragraph (d)(1) of this section must also apply to any patent granted on a continuing utility or plant application filed before June 8, 1995, or a continuing design application, that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought.
- (3) The provisions of paragraph (d)(1) of this section do not apply to applications for which revival is sought solely for purposes of copendency with a utility or plant application filed on or after June 8, 1995, to lapsed patents, to reissue applications, or to reexamination proceedings.
- (e) Request for reconsideration. Any request for reconsideration or review of a decision refusing to revive an abandoned application, a terminated or limited reexamination prosecution, or lapsed patent upon petition filed pursuant to this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision. Unless a decision indicates otherwise, this time period may be extended under:

(1) The provisions of § 1.136 for an abandoned application or lapsed patent;

- (2) The provisions of § 1.550(c) for a terminated ex parte reexamination prosecution, where the ex parte reexamination was filed under § 1.510; or
- (3) The provisions of § 1.956 for a terminated inter partes reexamination prosecution or an inter partes reexamination limited as to further prosecution, where the inter partes reexamination was filed under § 1.913.<
- (f) Abandonment for failure to notify the Office of a foreign filing: A nonprovisional application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing, may be revived only pursuant to paragraph (b) of this section. The reply requirement of paragraph (c) of this section is met by the notification of such filing in a foreign country or under a multinational treaty, but the filing of a petition under this section will not operate to stay any period for reply that may be running against the application.
- (g) Provisional applications: A provisional application, abandoned for failure to timely respond to an Office requirement, may be revived pursuant to this section. Subject to the provisions of 35 U.S.C. 119(e)(3) and § 1.7(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances.

37 CFR 1.181. Petition to the Director.

(a) Petition may be taken to the Director:

- (1) From any action or requirement of any examiner in the ex parte prosecution of an application, or in ex parte or inter partes prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court;
- (2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Director; and
- (3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Board of Patent Appeals and Interferences, see § 41.3 of this title.

(f) The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

I. PETITION TO WITHDRAW HOLDING OF ABANDONMENT

A petition to revive an abandoned application (discussed below) should not be confused with a petition from an examiner's holding of abandonment. Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action, and such petition does not require a fee. Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Two additional procedures are available for reviving an application that has become abandoned due to a failure to reply to an Office Action: (1) a petition under 37 CFR 1.137(a) based on unavoidable delay; and (2) a petition under 37 CFR 1.137(b) based on unintentional delay.

A. Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133). To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish propreseint of an Office action. The showing required to establish propreseint of an Office action. The showing required to establish propreseint of an Office action.

the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner **>describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence

such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

B. Petition To Withdraw Holding of Abandonment Based on Evidence That a Reply Was Timely Mailed or Filed

37 CFR 1.10(c) through 1.10(e) and 1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 CFR 1.10(c), (d), (e), or (g) (see MPEP § 513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.

Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP § 503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.

Where a certificate of mailing under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 CFR 1.8).

37 CFR 1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 CFR 1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

DR CARMINE F VASILE 60 HERBERT CIRCLE PATCHOGUE NY 11772

MAILED AUG 2 9 2011

In re Application of

Carmine F. Vasile

Application No. 11/466,084

Filed: August 21, 2006

Title: Advanced Gravity-Film &

Double-Helix Heat Exchangers

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition to revive under 37 CFR 1.137(b), filed August 17, 2011 (and supplemented with the \$810 petition fee filed on August 22, 2011).

The petition under 37 CFR 1.137(b) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely file a reply in response to the Notice of Non-Compliant Amendment, mailed April 12, 2010. This Notice set an extendable period for reply of one (1) month. No extensions of time under 37 CFR 1.136(a) were obtained. No reply having been received, the above identified application became abandoned on May 13, 2010. The Office mailed a Notice of Abandonment on .October 27, 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

The instant petition does not meet requirement (1) above. Petitioner has not submitted a reply to the April 12, 2010 Notice of Non-Compliant Amendment. Such a reply should be submitted on renewed petition. A copy of the Notice has been enclosed for petitioner's convenience.

Lastly, it is noted that petitioner again has included correspondence which appears to be intended for the Office of Inspector General. Any matters that petitioner wants reviewed by the Office of Inspector General should not be filed in the instant patent application, but should instead be addressed to the following:

U.S. Department of Commerce Office of Inspector General 1401 Constitute Avenue NW Washington, DC 20230

The renewed petition should be addressed as follows:

By mail:

Mail Stop Petitions

Commissioner for Patents

P.O. Box 1450

Alexandria VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

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Cliff Congo Petitions Attorney Office of Petitions

Enc: Notice of Non-Compliant Amendment



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE

U.S. Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450

Alexandria, Virginia 22313-1450 www.uspto.gov

04/12/2010

Dr. Carmine F. Vasile 60 Herbert Circle Patchogue, NY 11772

Paper No.

Application No.:	11/466,084	Date Mailed:	04/12/2010
First Named Inventor:	Vasile, Carmine, F.	Examiner:	FLANIGAN, ALLEN J
Attorney Docket No.:		Art Unit:	3744
Confirmation No.:	1409	Filing Date:	08/21/2006

Please find attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Notice of Non-Compliant Amendment	Application No. 1/466,084 Applicant(s) VASILE, CARMINE F.		NE F.
(37 CFR 1.121)		Art Unit 3700	
- The MAILING DATE of this communication app	ears on the cover sheet with the c	orrespondence ad	dress
The amendment document filed on <u>14 August, 2009</u> is c requirements of 37 CFR 1.121 or 1.4. In order for the amitem(s) is required.	onsidered non-compliant because nendment document to be compli	e it has failed to m ant, correction of t	eet the he following
THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE A 1. Amendments to the specification: A. Amended paragraph(s) do not include B. New paragraph(s) should not be under C. Other	markings.	BE NON-COMPLI	ANT:
2. Abstract:A. Not presented on a separate sheet. 37B. Other	CFR 1.72.		
 3. Amendments to the drawings: A. The drawings are not properly identifie "Annotated Sheet" as required by 37 C B. The practice of submitting proposed dreshowing amended figures, without ma C. Other 	CFR 1.121(d). rawing correction has been elimir	ated. Replaceme	ent drawings
 ✓ 4. Amendments to the claims: ☐ A. A complete listing of all of the claims is ☐ B. The listing of claims does not include t ☐ C. Each claim has not been provided with of each claim cannot be identified. No number by using one of the following s (Previously presented), (New), (Not er ☑ D. The claims of this amendment paper h ☑ E. Other: See Continuation Sheet. 	he text of all pending claims (inclinate proper status identifier, and ote: the status of every claim must status identifiers: (Original), (Currotered), (Withdrawn) and (Withdrawn)	as such, the indiv st be indicated afte ently amended), (awn-currently ame	idual status er its claim Canceled), inded).
5. Other (e.g., the amendment is unsigned or no of the amendment format required by 37 CFR 1.12		CFR 1.4): For furth	ner explanation
 TIME PERIODS FOR FILING A REPLY TO THIS NOTION Applicant is given no new time period if the non-confiled after allowance, or a drawing submission (only) amendment with corrections, the entire corrected and in the corrected are supplied to the corrected and in the corrected are supplied to the corrected and in the corrected are supplied to the corrected and in the corrected are supplied to the corrected and in the corrected are supplied to the corrected and in the corrected are supplied to the corrected and in the corrected are supplied to the corrected are supplied to the corrected and in the corrected are supplied to the corrected are supplied to the corrected and in the corrected are supplied to the corrected are supplied to the corrected and in the corrected are supplied to the corrected are supplied to the corrected and in the corrected are supplied to the corrected and the corrected are supplied to the corrected are suppl	mpliant amendment is an after-fir If applicant wishes to resubmit t	he non-compliant	
 Applicant is given one month, or thirty (30) days, where correction, if the non-compliant amendment is one or (including a submission for a request for continued examendment filed within a suspension period under 3 Quayle action. If any of above boxes 1 to 4 are checknon-compliant amendment in compliance with 37 CF 	of the following: a preliminary ame examination (RCE) under 37 CFR B7 CFR 1.103(a) or (c), and an an eked, the correction required is on	indment, a non-fin 11.114), a suppler nendment filed in	al amendment mental response to a
Extensions of time are available under 37 CFR amendment or an amendment filed in response to Failure to timely respond to this notice will resu Abandonment of the application if the non-co filed in response to a Quayle action; or Non-entry of the amendment if the non-compleamendment.	o a <i>Quayle</i> action. It in: mpliant amendment is a non-fina liant amendment is a preliminary	I amendment or a amendment or su	n amendment pplemental
Legal Instruments Examiner (LIE), if applicable /LISA FL	<u>JLTON/</u> Tele	phone No: (571)2	<u>72-4348</u>

A4!	4:	Chast	/DTO	2241
Continu	iation	Sneet	(P I UI	L-3Z41

Application No.11/466,084

Continuation of 4. Other: Claims 1-8 have been listed twice with a different status identifier. There should be one status identifier for each claim..

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usbto.gov

DR CARMINE F VASILE 60 HERBERT CIRCLE PATCHOGUE NY 11772

MAILED

NOV 03 2011

OFFICE OF PETITIONS

In re Application of

Carmine F. Vasile

Application No. 11/466,084 : ON PETITION

Filed: August 21, 2006

Title: Advanced Gravity-Film &

Double-Helix Heat Exchangers

This is a decision on the renewed petition to revive under 37 CFR 1.137(b), filed October 18, 2011.

The petition under 37 CFR 1.137(b) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely file a reply in response to the Notice of Non-Compliant Amendment, mailed April 12, 2010. This Notice set an extendable period for reply of one (1) month. No extensions of time under 37 CFR 1.136(a) were obtained. No reply having been received, the above identified application became abandoned on May 13, 2010. The Office mailed a Notice of Abandonment on October 27, 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

The instant petition does not meet requirement (1) above.

Petitioner has not submitted a reply to the April 12, 2010 Notice of Non-Compliant Amendment.

With the instant renewed petition, petitioner now argues that the April 12, 2010 Notice of Non-Compliant Amendment should never have been issued by the Office, because petitioner had previously submitted an Amendment in June of 2009 (a review of the file reveals that the Amendment was filed on June 22, 2009). However, the June 22, 2009 Amendment was itself not acceptable - the Examiner mailed a Notice of Non-Compliant Amendment in response to that Amendment on August 7, 2009. In turn, Applicant filed an Amendment on August 14, 2009, which resulted in the mailing of another Notice of Non-Compliant Amendment on (the Notice at issue) on April 12, 2010.

Accordingly, in view of the above, the Office properly mailed the April 12, 2010 Notice of Non-Compliant Amendment.

No additional petition fee is due on renewed petition. However, petitioner must submit a proper reply to the April 12, 2010 Notice of Non-Compliant Amendment.

The renewed petition should be addressed as follows:

By mail:

Mail Stop Petitions

Commissioner for Patents

P.O. Box 1450

Alexandria VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Why

Cliff Congo Petitions Attorney Office of Petitions

The August 7, 2009 Notice of Non-Compliant Amendment was mailed because the June 22, 2009 Amendment did not have a proper status identifier for each of the claims. On August 14, 2009, Applicant filed an Amendment. However, this time the claims each contained **two different** status identifiers — "withdrawn" and "currently amended". This is not acceptable practice, and this is why the Examiner mailed the April 12, 2010 Notice of Non-Compliant Amendment.

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usubo.gov

MAILED
DEC 05 2011
OFFICE OF PETITIONS

DR CARMINE F VASILE 60 HERBERT CIRCLE PATCHOGUE NY 11772

In re Application of Carmine F. Vasile

Application No. 11/466,084 : ON PETITION

Filed: August 21, 2006 : Title: Advanced Gravity-Film & :

Double-Helix Heat Exchangers

This is a decision on the renewed petition to revive under 37 CFR 1.137(b), filed November 25, 2011.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to timely file a reply in response to the Notice of Non-Compliant Amendment, mailed April 12, 2010. This Notice set an extendable period for reply of one (1) month. No extensions of time under 37 CFR 1.136(a) were obtained. No reply having been received, the above identified application became abandoned on May 13, 2010. The Office mailed a Notice of Abandonment on October 27, 2010.

With the instant petition, petitioner has submit a reply to the April 12, 2010 Notice of Non-Compliant Amendment. The other requirements for a grantable petition (petition fee and statement of unintentional delay) were previously satisfied with the earlier filed petitions.

The application is being forwarded to Group Art Unit 3744 for consideration of applicant's reply, filed November 25, 2011.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

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Cliff Congo Petitions Attorney Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

JOAN ANDERSEN 4232 SILVERBERRY AVE. FORT WORTH TX 76137

MAILED
MAR 3 1 2011
OFFICE OF PETITIONS

In re Application of

Joan Andersen

Application No. 11/466,092

Filed: August 21, 2006

Attorney Docket No. ANDE.00002

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 21, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, June 26, 2008 which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 27, 2008. A Notice of Abandonment was mailed January 13, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of \$810.00, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Technology Center AU 3677 for further appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

ALEXANDER C. PARK 2905 GAMBEL LANE PLANO TX 75025

MAILED

SEP 072010

OFFICE OF PETITIONS

In re Application of

Alexander C. Park

Application No. 11/466,103

Filed: August 21, 2006

Attorney Docket No. ORBITRACE

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 23, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, June 02, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 03, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$810, and (3) a proper statement of unintentional delay. Accordingly, the response to the non-final office action of June 02, 2009 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571)272-2783.

This application is being referred to Technology Center AU 3711 for appropriate action on the amendment filed September 17, 2009.

Ramesh Krishnamurthy Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Paper No.

JENKINS, WILSON, TAYLOR & HUNT, P. A. 3100 Tower Blvd. Suite 1200 DURHAM NC 27707

MAILED
JUN 282011
OFFICE OF PETITIONS

In re Application of

Mahdi et al.

DECISION ON

Application No. 11/466,115

PETITION

Filed: August 22, 2006

Atty Docket No. 1809/67/2

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)) filed May 18, 2011.

The petition is GRANTED.

The above-identified application was abandoned for failure to timely file a proper reply to the final Office action mailed October 12, 2010. This Office action set a shortened statutory period for reply of three (3) months from the mail date of the action. No reply having been received and no extension of time obtained, the application became abandoned effective January 13, 2010. A courtesy Notice of Abandonment was mailed on May 11, 2011.

On petition, petitioner submitted a Request for Continued Examination (RCE) and submission under §1.114 (in the form of an amendment) (and RCE fee); paid the petition fee; and made the required statement of unintentional delay.

Technology Center AU 2466 has been advised of this decision. The application is, thereby, forwarded to the examiner for

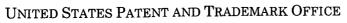
consideration of the RCE and submission submitted on May 18, 2011.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

vancy Johnson

Serior Petitions Attorney

Office of Petitions





Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SCHWEGMAN, LUNDBERG & WOESSNER, PA P.O. BOX 2938 MINNEAPOLIS MN 55402

MAILED

AUG 1 0 2010

In re Application of Blake Hannaford, et al. Application No. 11/466,269

OFFICE OF PETITIONS

Filed: August 22, 2006

DECISION ON PETITION TO WITHDRAW

Attorney Docket No. 2082.006US1

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 8, 2010.

The request is APPROVED.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to

The request was signed by David W. Black on behalf of all attorneys of record who are associated with customer No. 21186. All attorneys/agents associated with the Customer Number 21186 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor at the first copied address below until otherwise properly notified by the applicant.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

There is an outstanding Office action mailed December 28, 2009 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/ April M. Wise Petitions Examiner Office of Petitions

cc: BLAKE HANNAFORD 5634 12TH AVENUE, NE SEATTLE, WA 98105

cc: UNIVERSITY OF WASHINGTON 4311 ELEVENTH AVENUE, NE SUITE 500 SEATTLE, WA 98105-4608



21186

P.O. BOX 2938

United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE UNITED STATES DEPARTMENT OF COMMIT United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS PO. Box 1450 Alexandria, Viginia 22313-1450 www.uspto.gov

APPLICATION NUMBER

FILING OR 371(C) DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

11/466,269

MINNEAPOLIS, MN 55402

08/22/2006

Blake Hannaford

2082.006US1 **CONFIRMATION NO. 1743**

POWER OF ATTORNEY NOTICE

Date Mailed: 08/06/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 07/08/2010.

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.

• The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/amwise/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

DATE : 11/15/2011	FOR CERTIFICATE OF CORRECTION
TO SPECE ARTUNIT 27//	-
SUBJECT : Request for Certificate of Corre	ection for Appl. No.: <u>1/4663/5</u> Patent No.: <u>80/20/4</u> CofC mailroom date: <u>1/3/20/</u>
300 400000 000000 00000	1/2/02
Please respond to this request for a second	CofC mailroom date: /// 3/ dOf
Please respond to this request for a ce FOR IFW FILES:	ertificate of correction within 7 days.
the IFW application image. No new m meaning of the claims be changed.	corrections as shown in the COCIN document(s) in atter should be introduced, nor should the scope or
Please complete the response (see be using document code COCX.	elow) and forward the completed response to scanning
FOR PAPER FILES:	
Please review the requested changes/correction. Please complete this form	corrections as shown in the attached certificate of (see below) and forward it with the file to:
Certificates of Correction Brain Randolph Square – 9D10-A Palm Location 7580	nch (CofC)
Note:	
	Certificates of Correction Branch
	(571) 272-0460
Thank You For Your Assistance	` ,
The request for issuing the above-ic Note your decision on the appropriate box.	dentified correction(s) is hereby:
Approved	All changes apply.
☐ Approved in Part	Specify below which changes do not apply.
☐ Denied	State the reasons for denial below.
Comments:	

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: <u>1/3/2012</u>

DATE

: **12/23/11**

TO SPE OF

: ART UNIT: 2473

SUBJECT

: Request for Certificate of Correction for Appl. No.: 11/466.367 Patent No. 7,782,873

CofC mailroom date 12/16/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC) Randolph Square – 9D10-A Palm Location 7580

Ernest C. White, LIE	<u> </u>
Certificates of Correction	Branch
703-756-1814	

Thank You For Your Assistance

The request for issuing the above-identified corr	ection(s	ai (hereby:
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Note your decision on the appropriate box.

X Approved

All changes apply.

□ Approved in Part

Specify below which changes do not apply.

□ Denied

State the reasons for denial below.

Comments: The correction in the COCIN document has been verified to contain no

new matter and no amendment that changes the scope or meaning of the claims.

Therefore, the correction is hereby approved.

Kwang Bin Yao

<u> 2473</u>

SPE

Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: <u>1/3/2012</u>

DATE : 12/23/11

TO SPE OF : ART UNIT: 2473

SUBJECT: Request for Certificate of Correction for Appl. No.: 11/466.367 Patent No. 7.782,873

CofC mailroom date 12/16/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Ernest C. White, LIE

Certificates of Correction Branch
703-756-1814

Thank You For Your Assistance

The request for issuin	g the above-identified	correction(s) is hereby	y:
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Note your decision on the appropriate box.

X Approved All changes apply.

☐ Approved in Part Specify below which changes do not apply.

□ **Denied** State the reasons for denial below.

Comments: The correction in the COCIN document has been verified to contain no

new matter and no amendment that changes the scope or meaning of the claims.

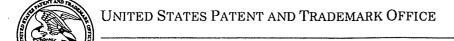
Therefore, the correction is hereby approved.

Kwang Bin Yao

2473

SPE

Art Unit



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

DATALOGIC - STOEL RIVES LLP C/O STOEL RIVES LLP 900 SW 5TH AVENUE, SUITE 2600 PORTLAND, OR 97204

MAILED

OCT 25 2010

OFFICE OF PETITIONS

In re Application of

Jim OSTROWSKI, et al.

Application No. 11/466,371

Filed: August 22, 2006

Attorney Docket No. 43133/1402

DECISION GRANTING PETITION

UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed October 22, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on September 15, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.¹

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 2887 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement and terminal disclaimer.

/Monica A. Graves/ Petitions Examiner, Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). <u>Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.</u>



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

VIERRA MAGEN MARCUS & DENIRO LLP 575 MARKET STREET, SUITE 2500 SAN FRANCISCO CA 94105

MAILED

JUN 20 2011

OFFICE OF PETITIONS

In re Application of

MONTANO, Ernest et al.

Application No. 11/466,443

Filed: August 22, 2006

Attorney Docket No. MNTO-01000US1

DECISION ON PETITION

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed April 29, 2011.

The request is **NOT APPROVED**.

A review of the file record indicates that Customer No. 28554 does not have power of attorney in this patent application nor is there any statement or evidence of record of employment in or otherwise being engaged in the proceedings in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

All future communications from the Office will continue to be directed to the below-listed address until otherwise properly notified by the applicant.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-4231.

Michelle R. Eason Paralegal Specialist Office of Petitions

cc:

SONNY MONTANO

relle L. Eden

MONTANO MANUFACTUING, INC. P.O. BOX 1629

MERCED, CA 95341